

Board Office Use: Legislative File Info.	
File ID Number	17-2626
Introduction Date	1-10-2018
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Enactment Date	1-10-2018 er



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools. Thriving Students*

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer *VH*  
Joe Dominguez, Deputy Chief Facilities *J*

**Board Meeting Date** January 10, 2018

**Subject** Resolution Supporting Award of Lease-Leaseback Agreement for the Piedmont Finishing Kitchen Project.

**Action Requested** Adoption of Resolution No. 1718-0106 and Approval by the Board of Education of the Site Lease, Facilities Lease, and Construction Documents (together, "Lease-Leaseback Agreement") for Construction of the Piedmont Finishing Kitchen Project ("Project"), located at Piedmont Avenue Elementary School ("Site"), 4341 Piedmont Avenue, Oakland, CA 94611, Using the Lease-Leaseback Project Delivery Method.

**Background** California Education Code section 17406 permits the governing board of a school district to lease property to a "developer," who constructs tenant improvements to the property and leases back the completed improvements to the district. The lease terminates after payments are completed.

In accordance with the section 17406, on January 25, 2017, the District's Board of Education ("Board") adopted Resolution No. 1717-0158, which adopted and published required procedures and guidelines ("Best Value Methodology") for evaluating the qualifications of proposers for lease-leaseback projects to ensure the best value selections by the District are conducted in a fair and impartial manner.

The District incorporated the Best Value Methodology into a Request for Qualifications and Proposals ("RFQ/P") for the Project, which was issued and publicly advertised in August 2017. One (1) proposal was received.

**Discussion** District staff and consultants reviewed the proposal submitted in response to the RFQ/P in accordance with the adopted Best Value Methodology and taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.

The proposer, Vila Tulum Joint Ventures ("JV"), was scored according to the adopted Best Value Methodology and selected to enter into negotiations with the District. Staff and counsel then negotiated the terms of the proposed Lease-Leaseback Agreement with the JV to construct the improvements at the

Site.

If the award of the Lease-Leaseback Agreement is approved, the parties will proceed according to section 17406. First, the JV will proceed with preconstruction services, including subcontractor bidding. After the bidding is complete, the JV will submit a Guaranteed Maximum Price (“GMP”) and Construction Schedule based on the terms and conditions in the Lease-Leaseback Agreement. If the parties reach an agreement, District staff will bring an Amendment to the Facilities Lease to the Board for approval. Then, construction will proceed.

**LBP (Local Business Participation Percentage)**

Waived by addendum to RFQ/P for modular work. The developer meets LBU as a joint venture, which includes Tulum Innovative Engineering, Inc., a certified Small Local Business Enterprise.

**Recommendation**

Adopt Resolution No. 1718-0106, and approve the Lease-Leaseback Agreement with Vila Tulum Joint Ventures for construction of the Piedmont Finishing Kitchen Project.

**Fiscal Impact**

Measure J Capital Funds - Fee for preconstruction services shall not exceed \$75,000. Fee for construction pending determination of the GMP.

**Attachments**

Resolution No. 1718-0106

Site Lease

Facilities Lease

Contract Documents



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

**Legislative File ID No.** \_\_\_\_\_

**Department:** Facilities Planning and Management

**Vendor Name:** Vila Tulum Joint Ventures

**Project Name:** Piedmont Finishing Kitchen Project      **Project No.:** \_\_\_\_\_

**Contract Term:** Intended Start: 1/11/2018      Intended End: 1/23/2019

**(if annual contract) or Total (if multi-year agreement) Cost:** NTE \$75,000 for preconstruction only

**Approved by:** Cesar Monterrosa

**Is Vendor a local Oakland Business or have they meet the requirements of the**

**Local Business Policy?**       Yes (No if Unchecked)

**How was this Vendor selected?**

Request for Qualifications and Proposals pursuant to the lease-leaseback statute. (Ed. Code, sec. 17406.)

**Summarize the services this Vendor will be providing.**

Developer will provide preconstruction services for the Project and, if the parties agree on a Guaranteed Maximum Price, following approval of the plans and specifications by the Division of the State Architect, will then construct the Project.

**Was this contract competitively bid?**       Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

Price for preconstruction services (\$75,000) was determined based on the proposal. Price for construction will be negotiated at conclusion of the preconstruction phase of the Project.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process")
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception** Lease-leaseback. (Ed. Code, sec. 17406.)

3)  **Not Applicable - no exception - Project was competitively bid**

**RESOLUTION NO. 1718-0106  
OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION  
RESOLUTION SUPPORTING AWARD OF LEASE-LEASEBACK AGREEMENT FOR  
THE PIEDMONT FINISHING KITCHEN PROJECT**

**WHEREAS**, the Oakland Unified School District ("District") is currently undertaking a project known as the Piedmont Finishing Kitchen Project ("Project"); and

**WHEREAS**, on January 25, 2017, the District's Board of Education ("Board") adopted Resolution No. 1717-0158, which adopted and published required procedures and guidelines ("Best Value Methodology") for evaluating the qualifications of proposers to ensure the best value selections by the District are conducted in a fair and impartial manner pursuant to Education Code section 17406; and

**WHEREAS**, the District incorporated the Best Value Methodology in a Request for Qualifications and Proposals ("RFQ/P"), which was issued on August 9, 2017; and

**WHEREAS**, the District advertised the RFQ/P in the *Oakland Post*, on August 9 and 23, 2017, and in *Small Business Exchange*, from August 17 through 23, 2017;

**WHEREAS**, attached hereto as **Exhibit "A"** are copies of Proofs of Publication; and

**WHEREAS**, District staff, in conjunction with District consultants, have reviewed the proposal for the Project submitted in response to the RFQ/P in accordance with the adopted Best Value Methodology and taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

**WHEREAS**, after consideration the proposal, the Board hereby awards the Site Lease and Facilities Lease (together, "Lease-Leaseback Agreement") for the Project to Vila Tulum Joint Ventures, which was the only respondent and satisfied the adopted Best Value Methodology; and

**WHEREAS**, Vila Tulum Joint Ventures has been prequalified pursuant to Public Contract Code section 20111.6; and

**WHEREAS**, Education Code section 17406 provides that the school district's governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award; and

**WHEREAS**, attached hereto as **Exhibit "B"** is a copy of the written findings of the Board supporting the Board's award of the Lease-Leaseback Agreement for the Project to Vila Tulum Joint Ventures.

**NOW, THEREFORE**, the Oakland Unified School District Board of Education hereby resolves, determines, and finds the following:

**Section 1.** That the foregoing recitals and the findings are true.

**Section 2.** That the District complied with the procedure set forth in Education Code section 17406, the Best Value Methodology adopted by the District, and the Request for Qualifications and Proposals issued by the District.

**Section 3.** That Vila Tulum Joint Ventures provided the best value to the District, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.

**Section 4.** That, based on the foregoing, it is in the best interest of the District to award the Lease-Leaseback Agreement for the Project to Vila Tulum Joint Ventures.

**Section 5.** That the Superintendent and her designees are authorized pursuant to this Resolution to take any and all actions, save those required of and reserved to Governing Board, that are necessary to carry out, give effect to, and comply with the terms and intent of this Resolution.

**APPROVED, PASSED AND ADOPTED** by the Board of Education the Oakland Unified School District on this 10th day of January, 2018, by the following vote:

AYES: Jody London, Nina Senn, Shanthi Gonzales, James Harris, Vice President Jumoke Hinton Hodge, President Aimee Eng

NOES: None

ABSTENTIONS: None

ABSENT: Roseann Torres

P.AYES: Enaisa Mc-Elvaine, Gema Quetzal  
(Student Directors)



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Aimee Eng  
President, Board of Education of the  
Oakland Unified School District

Attested to:



---

Kyla Johnson-Trammell  
Superintendent and  
Secretary, Board of Education of the  
Oakland Unified School District

**EXHIBIT "A"**  
**PROOF(S) OF PUBLICATION**

Starts on next page.



OAKLAND POST

380 14TH ST STE B05, OAKLAND, CA 94612  
Telephone (510) 267-8211 / Fax (510) 267-8247

JUANITA HUNTER  
OAKLAND USD/FACILITIES PLANNING & MGMT  
955 HIGH ST  
OAKLAND, CA - 94601

PROOF OF PUBLICATION

(2015, S.C.C.P.)

State of California )  
County of ALAMEDA ) ss

Notice Type: BID - NOTICE INVITING BIDS

Ad Description:

RFQ/P #010-17/LEASE-LEASEBACK MODULAR CONSTRUCTION SERVICES

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the OAKLAND POST, a newspaper published in the English language and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of ALAMEDA, State of California, under date of 06/25/1964, Case No. 341227. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

08/09/2017

Executed on: 08/09/2017  
At OAKLAND, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Joyce Powell*

Signature



End

No space for filing stamp only

CNS#: 3039398

OAKLAND UNIFIED  
SCHOOL DISTRICT  
REQUEST FOR  
QUALIFICATIONS AND  
PROPOSALS  
LEASE-LEASEBACK  
MODULAR CONSTRUCTION  
SERVICES  
RFQ/P #010-17

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, or corporations, associations, or professional organizations to provide design, construction, and/or construction management services for one or more of the following modular and/or prefabricated projects in accordance with the lease-leaseback structure set forth in Education Code section 7402 et seq. for Millwood Finishing Kitchen, Placement Finishing Kitchen, and SUC Renovator Project & Dewey Academy Multipurpose Room and Finishing Kitchen.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, is available at the District website ([www.oakusd.org](http://www.oakusd.org)) for your consideration. According to the specifications contained in this RFQ/P, Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet").

Respondents must mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy or CD or USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

OAKLAND UNIFIED  
SCHOOL DISTRICT  
Cesar Norferrera, Director of  
Division of Facilities  
Planning & Management  
322 High Street  
Oakland, CA 94601  
RFQ/P #010-17

ALL RESPONSES ARE DUE BY 1:00 P.M. ON WEDNESDAY, SEPTEMBER 6, 2017. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any formalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

A non-mandatory televiewer meeting will be conducted on THURSDAY, AUGUST 17, 2017, at 10:30 AM. The meeting will be held at the District's Facilities Office, located at 322 High Street, Oakland, CA 94601.

Questions regarding this RFQ/P may be directed to Tazashi Nakasegawa, Director of Facilities, [Tazashi.nakasegawa@oakusd.org](mailto:Tazashi.nakasegawa@oakusd.org) with a cc to Cesar Norferrera, Director of Facilities, [cesar.norferrera@oakusd.org](mailto:cesar.norferrera@oakusd.org), Abdul Kabbani, [Abdul.kabbani@oakusd.org](mailto:Abdul.kabbani@oakusd.org), and Mary Lacanna, [mary.lacanna@oakusd.org](mailto:mary.lacanna@oakusd.org). Project Manager, be submitted on or by 1:00 P.M. ON AUGUST 23, 2017.

In this RFQ/P, the term Respondent identifies the firm or partnership submitting an offer to enter into the terms of the Agreement included in Exhibit B. All Respondents must have already been prequalified by the District in accordance with the Public Contract Code section 22111.2. The Respondent is not required to identify electrical, mechanical and plumbing subcontractors but if such subcontractors are identified, they are also subject to the prequalification requirements as required by Public Contract Code section 22111.2.

8/9/17  
CNS-3039398  
OAKLAND POST



OAKLAND POST

No space for filing stamp only

380 14TH ST STE 805, OAKLAND, CA 94612  
Telephone (910) 287-8211 Fax (910) 287-8247

JUANITA HUMTER  
OAKLAND USD/FACILITIES PLANNING & MGMT  
955 HIGH ST  
OAKLAND, CA - 94601

PROOF OF PUBLICATION

(2015, 5 C.C.P.)

State of California )  
County of ALAMEDA ) ss

Notice Type: BID - NOTICE INVITING BIDS

Ad Description:  
RFQ/P 8010-17/OAKLAND UNIFIED SCHOOL DISTRICT- LLS MODULAR  
CONST

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the OAKLAND POST, a newspaper published in the English language and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of ALAMEDA, State of California, under date of 06/26/1954, Case No. 341227. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

08/23/2017

Executed on: 08/23/2017  
At OAKLAND, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Joyce Powell*

Signature



Serial

CNS# 3042562  
OAKLAND UNIFIED  
SCHOOL DISTRICT  
REQUEST FOR  
QUALIFICATIONS AND  
PROPOSALS  
LEASE-LEASEBACK  
MODULAR CONSTRUCTION  
SERVICES  
RFQ/P #8010-17

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide design, constructability review, value engineering, master scheduling, site logistic planning, cost estimating, budgeting, and construction services for the development and construction for one or more of the following modular mobile construction projects in accordance with the lease-leaseback structure set forth in Executive Order number 17468 of 2006, the Oakland Planning Kitchen, Raymond Dining Kitchen, and ELC Remanufacturing Project & Dairy Assembly Multipurpose Room and Planning Kitchen.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, is available at the District website ([www.usd.org](http://www.usd.org)) for your consideration. According to the specifications contained in this RFQ/P, Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet").

Respondents must mail or deliver five (5) hard copies, one (1) unbound copy, and one (1) electronic copy on CD or USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

OAKLAND UNIFIED  
SCHOOL DISTRICT  
Casey Mortenson, Director of  
Facilities,  
Planning & Management  
955 High Street  
Oakland, CA 94601  
RFQ/P 8010-17

ALL RESPONSES ARE DUE BY 4:00 PM, ON WEDNESDAY, SEPTEMBER 5, 2017. One telegraphic facsimile, telephone or email RFQ/P Packet will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any irregularities or inconsistencies in the RFQ/P Packet. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

A non-mandatory telegraphic meeting will be conducted on THURSDAY, AUGUST 17, 2017, at 10:00 AM. The meeting will be held at the District Facilities Office, located at 955 High Street, Oakland CA 94601.

Questions regarding this RFQ/P may be directed to Casey Mortenson, Director of Facilities, [Casey.Mortenson@usd.org](mailto:Casey.Mortenson@usd.org) with a cc to Casey Mortenson, Director of Facilities, [caseymortenson@usd.org](mailto:caseymortenson@usd.org), About: Mortenson, [About.Mortenson@usd.org](mailto:About.Mortenson@usd.org), and Mary Lagunas, [mary.lagunas@usd.org](mailto:mary.lagunas@usd.org). Project Manager, be advised on or by 4:00 P.M. ON AUGUST 23, 2017.

In this RFQ/P, the term Respondent identifies the firm or partnership submitting an offer to enter into the terms of the Agreements indicated in Exhibit B. All Respondents must have already been prequalified by the District in accordance with the Public Contract Code section 20111.2. The Respondent is not required to identify electrical, mechanical and plumbing subcontractors, but if such subcontractors are identified, they are also subject to the prequalification requirements as required by Public Contract Code section 20111.2.  
80397  
CNS-3042562  
OAKLAND POST

# Public Legal Notices

**OAKLAND UNIFIED SCHOOL DISTRICT**

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
LEASE-LEASEBACK CONSTRUCTION SERVICES FOR  
CLAREMONT MIDDLE SCHOOL  
RFQ# 0904-17**

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide construction services, value engineering, master scheduling, site logistic planning, cost estimating, budgeting, and construction services for the development and construction for the Classroom 16446a School Kitchen Repair and Synthetic Turf Field ("Project"). In accordance with the lease-back structure set forth in Education Code section 17406 et seq.

The Request for Qualifications and Proposals ("RFQP"), which includes instructions for its completion, is available at the District website ([www.oakd.edu](http://www.oakd.edu)) for your consideration. According to the specifications contained in this RFQP, Respondents to this RFQP shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQP Package").

Respondents must mail or deliver five (5) bound copies, one (1) colored copy, and one (1) electronic copy on CD or USB flash drive of the RFQP Package conforming to the requirements of this RFQP to:

**OAKLAND UNIFIED SCHOOL DISTRICT  
Cesar Montemayor, Director of Facilities Planning & Management  
333 High Street, Oakland, CA 94612  
Re: RFQP# 0904-17**

**ALL RESPONSES ARE DUE BY 1:00 PM, ON WEDNESDAY, SEPTEMBER 13, 2017.** Oral, telephonic, facsimile, telephone or email RFQP Packages will not be accepted. RFQP Packages received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any information or irregularities in the RFQP Package. The District also reserves the right to reject any and all RFQP Packages and to negotiate contract terms with one or more Respondents.

A non-exhaustive informational meeting will be conducted on **THURSDAY, AUGUST 17, 2017, at 10:00 AM.** The meeting will be held at the District's Facilities Office, located at 333 High Street, Oakland CA 94612.

Questions regarding this RFQP may be directed to Rafael Velazquez, Director of Facilities, at [rafael.velazquez@oakd.edu](mailto:rafael.velazquez@oakd.edu) with a copy ("cc") to Cesar Montemayor, Director of Facilities, at [cesar.montemayor@oakd.edu](mailto:cesar.montemayor@oakd.edu), and Abnerd Kishore, Project Manager, at [abnerd.kishore@oakd.edu](mailto:abnerd.kishore@oakd.edu). All questions must be submitted on or before 1:00 PM, ON AUGUST 23, 2017.

In this RFQP, the user Respondent identifies the firm or partnership submitting as the entity to enter into the terms of the Agreement included in Exhibit B. All Respondents must have already been prequalified by the District in accordance with the Public Contract Code section 20111.6. The Respondent is not required to identify chemical, mechanical and plumbing subcontractors but if such subcontractors are identified, they are also subject to the prequalification requirements as required by Public Contract Code section 20111.6.

**OAKLAND UNIFIED SCHOOL DISTRICT**

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
LEASE-LEASEBACK MODULAR CONSTRUCTION SERVICES  
RFQ# 0904-17**

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide design, construction services, value engineering, master scheduling, site logistic planning, cost estimating, budgeting, and construction services for the development and construction for one or more of the following modular and/or prefabricated projects in accordance with the lease-backback structure set forth in Education Code section 17406 et seq. for: Hillcrest Planning Kitchen, Piedmont Planning Kitchen, and HLC Elementary Project & DeWitt Academy Multipurpose Room and Planning Kitchen.

The Request for Qualifications and Proposals ("RFQP"), which includes instructions for its completion, is available at the District website ([www.oakd.edu](http://www.oakd.edu)) for your consideration. According to the specifications contained in this RFQP, Respondents to this RFQP shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQP Package").

Respondents must mail or deliver five (5) bound copies, one (1) colored copy, and one (1) electronic copy on CD or USB flash drive of the RFQP Package conforming to the requirements of this RFQP to:

**OAKLAND UNIFIED SCHOOL DISTRICT  
Cesar Montemayor, Director of Facilities Planning & Management  
333 High Street  
Oakland, CA 94612, RFQP# 0904-17**

**ALL RESPONSES ARE DUE BY 1:00 PM, ON WEDNESDAY, SEPTEMBER 13, 2017.** Oral, telephonic, facsimile, telephone or email RFQP Packages will not be accepted. RFQP Packages received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any information or irregularities in the RFQP Package. The District also reserves the right to reject any and all RFQP Packages and to negotiate contract terms with one or more Respondents.

A non-exhaustive informational meeting will be conducted on **THURSDAY, AUGUST 17, 2017, at 10:00 AM.** The meeting will be held at the District's Facilities Office, located at 333 High Street, Oakland CA 94612.

Questions regarding this RFQP may be directed to Rafael Velazquez, Director of Facilities, at [rafael.velazquez@oakd.edu](mailto:rafael.velazquez@oakd.edu) with a cc to Cesar Montemayor, Director of Facilities, at [cesar.montemayor@oakd.edu](mailto:cesar.montemayor@oakd.edu), Abnerd Kishore, Project Manager, at [abnerd.kishore@oakd.edu](mailto:abnerd.kishore@oakd.edu), and Mary Lohman, [mary.lohman@oakd.edu](mailto:mary.lohman@oakd.edu). Project Manager, is submitted on or by 1:00 PM, ON AUGUST 23, 2017.

In this RFQP, the user Respondent identifies the firm or partnership submitting as the entity to enter into the terms of the Agreement included in Exhibit B. All Respondents must have already been prequalified by the District in accordance with the Public Contract Code section 20111.6. The Respondent is not required to identify chemical, mechanical and plumbing subcontractors but if such subcontractors are identified, they are also subject to the prequalification requirements as required by Public Contract Code section 20111.6.

**OAKLAND UNIFIED SCHOOL DISTRICT**

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
LEASE-LEASEBACK MODULAR CONSTRUCTION SERVICES  
RFQ# 0904-17**

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide construction services, value engineering, master scheduling, site logistic planning, cost estimating, budgeting, and construction services for the development and construction for the Dr. Martin Luther King Jr. Community Center ("Project") in accordance with the lease-backback structure set forth in Education Code section 17406 et seq. The Project includes rehabilitation of The Paul Robeson Building and The Earl Warren Memorial Building, and construction of a new 6,000-sq-ft multi-purpose modular building on the current Dewey Academy campus.

The Request for Qualifications and Proposals ("RFQP"), which includes instructions for its completion, is available at the District website ([www.oakd.edu](http://www.oakd.edu)) for your consideration. According to the specifications contained in this RFQP, Respondents to this RFQP shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQP Package").

Respondents must mail or deliver five (5) bound copies, one (1) colored copy, and one (1) electronic copy on CD or USB flash drive of the RFQP Package conforming to the requirements of this RFQP to:

**OAKLAND UNIFIED SCHOOL DISTRICT  
ATtn: Cesar Montemayor  
333 High Street  
Oakland, CA 94612  
Re: RFQP# 0904-17**

**ALL RESPONSES ARE DUE BY 1:00 PM, ON WEDNESDAY, SEPTEMBER 13, 2017.** Oral, telephonic, facsimile, telephone or email RFQP Packages will not be accepted. RFQP Packages received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any information or irregularities in the RFQP Package, to reject any and all RFQP Packages, and to negotiate contract terms with one or more Respondents.

A non-exhaustive informational meeting will be conducted on **THURSDAY, AUGUST 17, 2017, at 10:00 AM.** The meeting will be held at the District's Facilities Office, located at 333 High Street, Oakland CA 94612.

Questions regarding this RFQP may be directed to Rafael Velazquez, Director of Facilities, at [rafael.velazquez@oakd.edu](mailto:rafael.velazquez@oakd.edu) with a copy ("cc") to Cesar Montemayor, Director of Facilities, at [cesar.montemayor@oakd.edu](mailto:cesar.montemayor@oakd.edu), and Abnerd Kishore, Project Manager, at [abnerd.kishore@oakd.edu](mailto:abnerd.kishore@oakd.edu). All questions must be submitted on or before 1:00 PM, ON AUGUST 23, 2017.

In this RFQP, the user Respondent identifies the firm or partnership submitting as the entity to enter into the terms of the Agreement included in Exhibit B. All Respondents must have already been prequalified by the District in accordance with the Public Contract Code section 20111.6. The Respondent is not required to identify chemical, mechanical and plumbing subcontractors but if such subcontractors are identified, they are also subject to the prequalification requirements as required by Public Contract Code section 20111.6.

## California Sub-Bid Request Ad

**Pacific States ENVIRONMENTAL CONSTRUCTORS INC.**  
CALLIC. NO. 782341  
11255 Dublin Boulevard • Dublin, CA 94568-2908  
Phone: (925) 882-0233 • FAX: (925) 882-4324  
E-mail: [Paul.Villanueva@pacstates.com](mailto:Paul.Villanueva@pacstates.com)  
[www.pacstates.com](http://www.pacstates.com)

Pacific States Environmental Constructors, Inc. ("PSECI") is preparing a bid or a Prime Contract for the project listed below:  
**Water Pollution Control Plant for Hayward 2017**  
Owner:  
**City of San Leandro**  
333 East 14th Street 2nd Floor  
San Leandro, CA  
BID DATE: September 7, 2017 @ 4:00 PM

We hereby, on-behalf responsible Participation of San Leandro Local Business Enterprises (LBEC) and solicit their sub-contract, materials and/or supplies and trading quantities for the following type of work including but not limited to:  
**Teaching and Student Council**

At our discretion, 200% Pre-bid and 200% Performance bond may be required in a sub-contract condition. Please call if you need information in estimating bidding, the means, equipment, materials and/or supplies for this project.

This will be a **PRE-BIDDING WORKSHOP**. Plans and specifications may be reviewed at our office located at 11255 Dublin Boulevard, Dublin, CA, or on electronic copies in San Leandro in the meeting room at 1127 1/2 Ave. The Project plans and contract book may be obtained free of charge from the City's website <http://www.sanleandro.org/documents/procurement>.

PSECI is willing to brook a 5% portion of work to encourage Local Business Participation (LBEC) and solicit their sub-contract or materials and/or supplies and trading quantities or will increase the percentage of meeting the City of San Leandro's Local Business Participation Goal (LBEC). If you require an estimate, please contact the estimator. Plan information email him at [pranisham@pacstates.com](mailto:pranisham@pacstates.com) or call (925) 882-0233. His fax is: 882-4324. When submitting a bid, please include your LBEN number and LBEC number. For questions regarding registration for LBEC see the link at: [www.aiaa.gov/California/PacificStates.html](http://www.aiaa.gov/California/PacificStates.html). We are an equal opportunity employer.

## Ensuring Access For All

**Continued from page 8**  
women are more successful than men raising money from the crowd. Their success has resulted in such innovative creations as **Indiegogo**, the world's first social robot for the home and a hand written cheese bar, **Miriam Cheese** in San Francisco.

It should come as no surprise that a leader in developing the crowdfunding financing model — Indiegogo — would be committed to diversity and inclusion. "Having a diverse product development and sales team helps us better connect with the customer base," said Sangarita Rajagopalan, general counsel for Indiegogo. It's one diversity and inclusion is mission-critical. The company has a heavily values-based culture and expects an innovation for its own success. "We need to reflect the backgrounds of the people we serve," said Victoria Harris, an executive manager at Indiegogo.

SOURCE: [www.farbar.com](http://www.farbar.com)

**EXHIBIT "B"**

**FINDINGS REGARDING THE AWARD OF THE LEASE-LEASEBACK AGREEMENT  
FOR THE PIEDMONT FINISHING KITCHEN PROJECT**

**WHEREAS**, Vila Tulum Joint Ventures complied with the District's S/LBE policy (BP & AR 7115) for this Project; and

**WHEREAS**, Vila Tulum Joint Ventures received 44 out of 75 points for Price Points criteria; and

**WHEREAS**, Vila Tulum Joint Ventures received 90 out of 120 points for Technical Expertise criteria; and

**WHEREAS**, Vila Tulum Joint Ventures received 15 out of 15 points for Safety criteria; and

**WHEREAS**, Vila Tulum Joint Ventures received 16 out of 30 points for Schedule criteria; and

**WHEREAS**, Vila Tulum Joint Ventures received 18 out of 30 points for Staffing criteria; and

**WHEREAS**, Vila Tulum Joint Ventures received 27 out of 30 points for Financial Strength criteria; and

**WHEREAS**, Vila Tulum Joint Ventures' overall combined score was 210 out of 300 points based on the Request for Qualifications and Proposals (RFQ/P) evaluation criteria in accordance with the methodology described in the RFQ/P, and was ranked as the best value to the District as the only proposal submitted.

**SITE LEASE**

**For all or a portion of the following Site:**

Piedmont Finishing Kitchen Project  
4341 Piedmont Ave.  
Oakland, CA 94611  
APN: 013-1118-020-01

**By and between**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601

**And**

Vila Tulum Joint Ventures  
590 South 33<sup>rd</sup> Street  
Richmond, CA 94804

Dated as of December \_\_, 2017

**SITE LEASE**

January 10, 2018 *mm*

This site lease ("Site Lease") dated as of ~~December 1, 2017~~ ("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 Vila Tulum Joint Ventures, a California joint venture duly organized and existing under the laws of the State, as lessee ("Developer") (together, the "Parties").

**RECITALS**

**WHEREAS**, the District currently owns a parcel of land located at 4314 Piedmont Ave., Oakland CA, 94611 known as Piedmont Avenue Elementary School, as more particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by this reference ("School Site"); and

**WHEREAS**, the District desires to provide for the development and construction of certain work to be performed on portions of the School Site. That work will include construction of improvements to be known as Piedmont Finishing Kitchen Project ("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 Governing Board of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the 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**, this Site Lease and Facilities Lease are awarded based a competitive solicitation process pursuant to Education Code section 17406 and in compliance with the required procedures and guidelines for evaluating the qualifications of proposers adopted and published by the Board to the proposer providing the best value to the school district, taking into consideration the proposer's demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

**WHEREAS**, the selection of the Developer was conducted in a fair and impartial manner; and

**WHEREAS**, based on the above findings, 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; and

## **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.

## **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.

**7.3.3.** Re-let the Project Site; and

**7.3.4.** Stop all Work associated with the Site Lease.

## **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.

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 assessment 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. Condemnation Proceedings**

**15.5.1.** 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.

**15.5.2.** 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.

#### **15.6. 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.

#### **15.7. 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.

### **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 company duly organized and existing under the laws of 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.



**21. Notices**

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) days after deposit in the United States mail in registered or certified form with postage fully prepaid or one (1) business day after deposit with an overnight delivery service with proof of actual delivery:

**If to District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
Attn: Kayla Johnson-Trammell,  
Superintendent

**With a copy to:**

Deidree Y.M.K. Sakai, Esq.  
Dannis Woliver Kelley  
275 Battery Street, Suite 1150  
San Francisco, CA 94111

**If to Developer:**

Vila Tulum Joint Ventures  
590 South 33<sup>rd</sup> Street  
Richmond, CA 94804  
Attn: Henry Vila, Senior Vice President

**With a copy to:**

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 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.

**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.

**ACCEPTED AND AGREED** on the date indicated below:

Dated: 1/10, 2018

Dated: Dec. 8, 2017

Oakland Unified School District

Vila Tulum Joint Ventures

By: *Amie Long*  
president, Board of Education 1/11/18

By: *[Signature]*

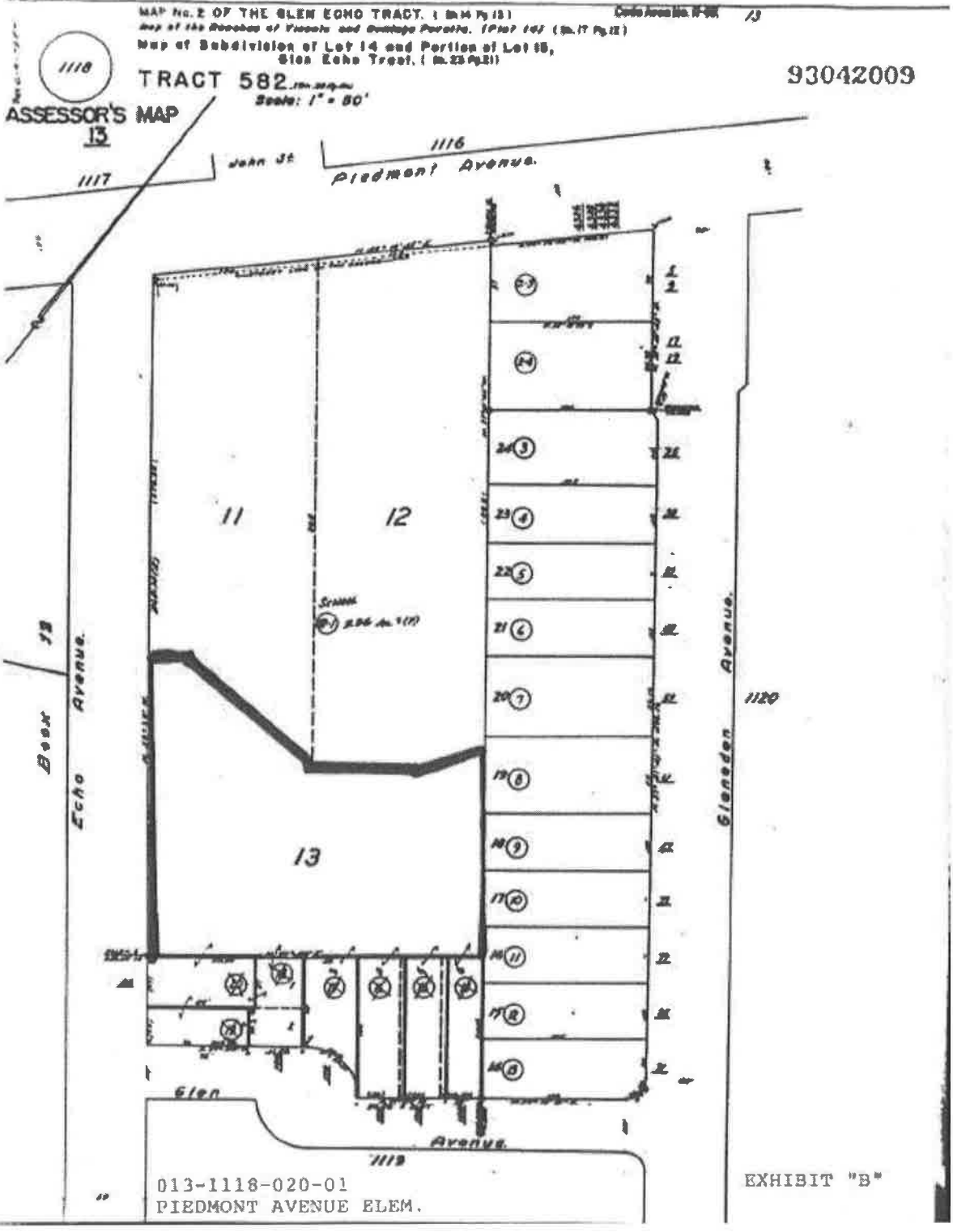
Name: *D. H. Long*

Name: Richard H. Vila

Title: Secretary, Board of Education 1/11/18

Title: President

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: *[Signature]*  
Marion McWilliams, General Counsel



**FACILITIES LEASE**

**For all or a portion of the following Site:**

Piedmont Finishing Kitchen Project  
4341 Piedmont Ave.  
Oakland, CA 94611  
APN: 013-1118-020-01

**By and between**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601

**And**

Vila Tulum Joint Ventures  
590 South 33<sup>rd</sup> Street  
Richmond, CA 94804

Dated as of December \_\_, 2017

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Exhibit A	Legal Description of School Site
Exhibit B	Description of Project Site
Exhibit C	Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions
Exhibit D	General Construction Provisions
Exhibit D-1	Special Conditions
Exhibit E	Memorandum of Commencement Date
Exhibit F	Construction Schedule
Exhibit G	Schedule of Values
Exhibit H	Project Labor Agreement
Exhibit I	Local, Small Local, and Small Local Resident Business Enterprise Program
Exhibit J	Disabled Veterans Business Enterprise Participation Policy

**WHEREAS**, the selection of the Developer was conducted in a fair and impartial manner; and

**WHEREAS**, Developer has reviewed the Lease Documents; and

**WHEREAS**, Developer represents that it has the expertise and experience to perform the services set forth in this Facilities 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 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**, 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 Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease.

**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 in subsequent provisions, 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 Vila Tulum Joint Ventures, a joint venture partnership, organized and existing under the laws of the State of California, Contractor’s license number 1029754 issued by the State of California, Contractors’ State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code, 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 Education 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 ad valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

**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.

**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, whichever occurs first ("Commencement Date"):

- 4.1.1** The date the District takes beneficial occupancy of the Project; or
- 4.1.2** The date when Developer delivers possession of the Project to District and when all improvements to be provided by Developer are determined by the District to be completed as set forth in **Exhibits D and D-1** to this Facilities Lease.

Unless earlier terminated pursuant to the provisions of the Contract Documents, the Term of this Facilities Lease for the purposes of District's obligations to make Lease Payments shall terminate one (1) year thereafter or upon payment of the final lease payment.

- 4.2** After Developer has completed construction of the Project and the District has accepted the Project, the Parties shall execute the Memorandum of Commencement Date attached hereto as **Exhibit E** to memorialize the commencement date of the Lease Payments and expiration date 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 Lease Payment obligations.
- 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



lawfully do so. Notwithstanding the foregoing, Developer shall have the right to inspect the Project and the Project Site as provided herein.

## **8. Representations of the District**

The District represents, covenants and warrants to the Developer as follows:

### **8.1 Due Organization and Existence**

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

### **8.2 Authorization**

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

### **8.3 No Violations**

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

### **8.4 Condemnation Proceedings**

**8.4.1** 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.

**8.4.2** 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 this Facilities Lease.

## **9. Representations of the Developer**

The Developer represents, covenants and warrants to the District as follows:

### **9.1 Due Organization and Existence**

The Developer is a California company duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease

## **10. Pre-construction Services**

### **10.1 Scope of the Preconstruction Services**

Developer shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following:

#### **10.1.1 General Services**

**10.1.1.1** Developer shall attend weekly design review meetings between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.

**10.1.1.2** Developer shall prepare and update the components of the Guaranteed Maximum Price and shall be primarily responsible for ensuring that the Project can and is constructed for no more than that amount.

#### **10.1.2 Review of Design Documents.**

**10.1.2.1** Review Project design and budget with the District, the Construction Manager, and the Architect to:

**10.1.2.1.1** Provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

**10.1.2.1.2** Provide, for an expedited schedule, recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions; and

**10.1.2.1.3** Provide plan review.

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

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

**10.1.3 Budget of Project Costs.**

**10.1.3.1** Developer shall advise the District, the Construction Manager, and the Architect if it appears that the total construction costs may exceed the Guaranteed Maximum Price established by the District and shall make recommendations for corrective action. Developer will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

**10.1.3.2** In the Guaranteed Maximum Price, Developer shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Maximum Price shall include, at a minimum, the following information divided into at least the following categories for each site:

**10.1.3.2.1** Overhead and profit;

**10.1.3.2.2** Supervision;

**10.1.3.2.3** General conditions;

**10.1.3.2.4** Layout & Mobilization (not more than 1%)

**10.1.3.2.5** Submittals, samples, shop drawings (not more than 3%);

**10.1.3.2.6** Bonds and insurance (not more than 2%);

**10.1.3.2.7** Close-out documentation (not less than 3%);

**10.1.3.2.8** Demolition;

**10.1.3.2.9** Installation;

**10.1.3.2.10** Rough-in;

**10.1.3.2.11** Finishes;

**10.1.3.2.12** Testing;

**10.1.3.2.13** Owner and Maintenance Manuals;

**10.1.3.2.14** Punchlist and acceptance.

- 10.1.5.7.1** Developer shall engage in competitive bidding for subcontractors for all scopes of work on the Project that constitute more than one half of one percent (0.5%) of the total GMP.
- 10.1.5.7.2** Developer shall provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the school district, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
- 10.1.5.7.3** Developer shall establish reasonable qualification criteria and standards for District review and approval, which shall not be unreasonably withheld.
- 10.1.5.7.4** The District representative shall be present during the receipt of bids from subcontractors. Developer shall provide all bids received from all subcontractors to the District.
- 10.1.5.7.5** Developer shall award the subcontract on a best value basis.
- 10.1.5.7.6** Developer is required to receive at least three (3) bona fide bids from subcontractors for all scopes of work, or seek the District's prior approval if it wishes to provide fewer than the minimum number of bona fide bids from subcontractors.
- 10.1.5.7.7** The process may include prequalification or short-listing.
- 10.1.5.8** The GMP shall be presented to the District in the following manner within a three ring binder as well as electronically on an external memory device such as a CD, USB drive, or other comparable device:
- 10.1.5.8.1** Cover sheet, signed by the Developer indicating the GMP dollar amount with a certification, indicating that the GMP is all inclusive per the plans, specifications and addenda (contract documents). Also include certification stating, "Developer hereby certifies that they have reviewed all subcontractor proposals and whether the subcontractor excluded portions of their scope the Developer has included all costs for a complete GMP in accordance with plans, specifications and addenda."
- 10.1.5.8.2** A bid tabulation sheet indicating the breakdown by subcontractor/trade along with the appropriate

#### **10.4 Open Book Policy**

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

#### **10.5 Compensation to Developer for Preconstruction Services**

District agrees to reimburse Developer in the total amount not to exceed Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), for the performance of preconstruction services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. In the event Developer and District enter into an Amendment to the Facilities Lease for the construction of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

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

#### **10.6 Termination before Construction Phase**

**10.6.1** Before the Notice to Proceed with Construction is issued by the District, this Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of such a termination by District, the District shall pay Developer for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Developer pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Developer for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to completed work and work in process that would best serve the District if a completed product was presented.

**10.6.2** In the event that the parties do not reach an agreement on the GMP, this Agreement will be terminated at that time. In the event

the Developer under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in **Exhibit D**.

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

**11.1.5 Guaranteed Maximum Price**

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

**11.1.6 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 or time will be handled as a modification pursuant to the provisions of **Exhibit D**.

**11.1.7 Labor Compliance Monitoring and Enforcement by Department of Industrial Relations**

This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code section 1771.4 and Title 8 of the California Code of Regulations. Developer specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code.

**11.1.8 Project Labor Agreement**

This Project is subject to the extension or renewal of a project labor agreement entered into by the District prior to January 1, 2017, attached to the Facilities Lease as Exhibit H.

**11.1.8.1 Skilled and Trained Workforce.**

Pursuant to Education Code section 17407.5, Developer is not required to establish its enforceable commitment to use a Skilled and Trained Workforce, as defined in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code, as Developer and all its subcontractors at every tier will become a party to the District's Project Labor Agreement.

**15.1.1 Commercial General Liability and Automobile Liability Insurance**

**15.1.1.1** Developer shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Developer, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. This coverage shall be provided in a form at least as broad as Insurance Services (ISO) Form CG 00 01 11 88. Developer shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned, non-owned, and hired, are included within the above policies and at the required limits, or Developer shall procure and maintain these coverages separately.

**15.1.1.2** Developer's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five thousand dollars (\$25,000) for self-insured retention, respectively, unless approved in writing by District.

**15.1.1.3** All such policies shall be written on an occurrence form.

**15.1.2 Excess Liability Insurance**

**15.1.2.1** Developer may procure and maintain, during the life of the Project, an Excess 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 Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Developer, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) in amounts and including the provisions as set forth in **Exhibit D** or **Exhibit D-1** and/or the Supplementary Conditions (if any), and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**15.1.2.3** The District, in its sole discretion, may accept the Excess Liability Insurance Policy that bring Developer's primary limits to the minimum requirements herein.



rain, dust, fire, war, terrorism, lightning, smoke, and rioting. 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.

#### **15.1.6 Pollution Liability Insurance**

- 15.1.6.1** Developer shall procure and maintain Pollution Liability Insurance that shall protect Developer, District, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Facilities Lease, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. This coverage shall be provided in a form at least as broad as Insurance Services Offices, Inc. (ISO) Form CG 2415, or Developer shall procure and maintain these coverages separately.
- 15.1.6.2** Developer shall warrant that any retroactive date applicable to coverage under the policy predates the Effective Date of this Facilities Lease and that continuous coverage will be maintained or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.
- 15.1.6.3** If Developer is responsible for removing any pollutants from a site, then Developer shall ensure that Any Auto, including owned, non-owned, and hired, are included within the above policies and at the required limits, to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

same coverage and limits as the policy that was in effect during the term of this Facilities Lease, and will cover the Developer and all Subcontractors for all claims made.

- 15.1.7.5** Developer's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).
- 15.1.7.6** All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 15.1.7.7** All policies shall be written on an occurrence form.
- 15.1.7.8** All of Developer's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI.
- 15.1.7.9** The insurance requirements set forth herein shall in no way limit the Developer's liability arising out of or relating to the performance of the Work or related activities.
- 15.1.7.10** Failure of Developer and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Facilities Lease and constitute a Default by the Developer pursuant to this Facilities Lease.

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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 twenty-four (24) 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. Upon Developer's request made after District's acceptance of the Project, District shall provide Developer with a certificate of insurance for the required coverage.

### **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. Upon Developer's request made after District's acceptance of the Project, District shall provide Developer with a certificate of insurance for the required coverage.

## **16. Indemnification and Defense**

- 16.1** To the fullest extent permitted by California law, Developer shall indemnify, keep and hold harmless the District and its respective Board Members, officers, representatives, employees, consultants, the Architect and Construction Manager in both individual and official capacities and their consultants ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees and costs, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Developer or its Subcontractors, vendors and/or suppliers, including any suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or injury to or destruction of tangible property (including damage to the Work itself) and including the loss of use resulting therefrom, except to the extent caused wholly by the active negligence or willful misconduct of the Indemnitees. This indemnification and hold harmless obligation includes any failure or alleged failure by Developer to comply with any law and/or provision of the Contract Documents, including, without limitation, any stop payment notice actions or liens, including Civil

Manager and their sub-consultants and pay any damages due by reason of settlement or judgment.

- 16.6** The indemnification and defense obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

## **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 Maximum Price Provisions indicated in Exhibit C that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C for the remainder of the original Term. For example, if all of the Project and the Project Site is taken at the end of the third year of the Term, Developer shall be entitled to receive from the eminent domain award the sum of all principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C that would have been owing for the fourth year through the end of the Term had there been no taking.

- 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

**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 Maximum Price 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.

**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 the 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.

## **22.2 District's Right to Terminate Developer for Cause**

### **22.2.1 Grounds for Termination**

The District, in its sole discretion, without prejudice to any other right or remedy, may terminate the Site Lease and Facilities Lease and/or terminate the Developer's right to perform the work of the Facilities Lease based upon any of the following:

- 22.2.1.1** Developer refuses or fails to execute the Work or any separable part thereof; or
- 22.2.1.2** Developer fails to complete said Work within the time specified or any extension thereof; or
- 22.2.1.3** Developer persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with the Facilities Lease; or
- 22.2.1.4** Prior to completion of the Project, Developer is adjudged a bankrupt, files a petition for relief as a debtor, or a petition is filed against the Developer without its consent, and the petition not dismissed within sixty (60) days; or
- 22.2.1.5** Prior to the completion of the Project, Developer makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 22.2.1.6** Developer persistently or repeatedly refuses and/or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 22.2.1.7** Developer fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 22.2.1.8** Developer persistently disregards laws, or ordinances, or instructions of District as indicated in **Exhibit D**, or otherwise in violation of **Exhibit D**; or
- 22.2.1.9** Developer fails to comply with the District's Project Labor Agreement; or
- 22.2.1.10** Developer fails to comply with the District's Local, Small Local and Small Local Resident Business Enterprise Program; or
- 22.2.1.11** Developer fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

- 22.2.2.3** Surety shall not utilize Developer in completing the Project if the District notifies Surety of the District's objection to Developer's further participation in the completion of the Project. Surety expressly agrees that any developer which Surety proposes to fulfill Surety's obligations is subject to District's approval.
- 22.2.2.4** If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Developer and/or its Surety. Developer and its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Facilities Lease. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work all materials, appliances, plan, and other property belonging to Developer as may be on the Site of the Work, in bonded storage, or previously paid for.

### **22.2.3 Effect of Termination**

- 22.2.3.1** 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 Maximum Price Provisions indicated in Exhibit C, less any damages incurred by District due to Developer's default, acts, or omissions.
- 22.2.3.2** The District shall retain all rights it possesses pursuant to this Facilities Lease including, without limitation.
- 22.2.3.2.1** The right to assess liquidated damages due because of any project delay; and
- 22.2.3.2.2** All rights the District holds to demand performance pursuant to the Developer's required performance bond.
- 22.2.3.3** Developer shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Developer and its Surety shall be liable



suffered by, or due to, the District as a result of any default, acts, or omissions of the Developer.

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

### **22.3 Termination of Developer for Convenience**

**22.3.1** District in its sole discretion may terminate the Facilities Lease upon five (5) days written notice to the Developer. Under a termination for convenience, the District retains the right to all the options available to the District if there is a termination for cause. In case of a termination for convenience, the Developer shall have no claims against the District except:

**22.3.1.1** The actual cost for labor, materials, and services performed that is unpaid and adequately documented through timesheets, invoices, receipts, or otherwise; and

**22.3.1.2** Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all Developer's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated lost profits resulting from termination of the Developer for convenience.

### **22.4 Developer Remedies Upon District Default**

#### **22.4.1 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," whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only mean one or more of the following events:

**22.4.1.1** Failure by the District to pay payments required pursuant to the Guaranteed Maximum Price Provisions in Exhibit C, and the continuation of this failure for a period of forty-five (45) days.

**22.4.1.2** 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 withhold its consent to an extension

### **22.4.3 District's Continuing Obligation**

Unless there has been damage, destruction, a Taking, or the Developer has acted, failed to act, or is in default as indicated above providing District with the right to terminate for cause, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Maximum Price Provisions in **Exhibit C** and those amounts shall be payable to Developer at the time and in the manner therein provided.

### **22.4.4 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, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

## **22.5 Suspension of Work**

**22.5.1** District in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine upon three (3) days written notice to the Developer.

**22.5.1.1** An adjustment may be made for changes in the cost of performance of the Work caused by any suspension, delay or interruption. No adjustment shall be made to the extent:

**22.5.1.1.1** That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Developer is responsible; or

**22.5.1.1.2** That an equitable adjustment is made or denied under another provision of the Site Lease or the Facilities Lease; or

**22.5.1.1.3** That the suspension of Work was the direct or indirect result of Developer's failure to perform any of its obligations hereunder.

**22.5.1.2** Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order in Exhibit D. This

**28. 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 Maximum Price Provisions in **Exhibit C** shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs.

**29. 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 one and the same instrument.

**30. 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, the approval or 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.

**31. 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.

**32. 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.

**33. 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.

**34. 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 matter shall be effective for any purpose.

**35. Further Assurances**

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

**36. Recitals and Exhibits Incorporated**

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF SCHOOL SITE**

**Attached is the Legal Description for:**

Piedmont Finishing Kitchen Project  
4341 Piedmont Ave.  
Oakland, CA 94611  
APN: 013-1118-020-01

**LEGAL DESCRIPTION**

**REAL PROPERTY** in the City of Oakland, County of Alameda, State of California, described as follows:

Known and designated as Lot No. 13, as laid down and delineated on a certain Map entitled, "Map No. 2 of the Glen Echo Tract, portion of Kellersberger's Plot, 14, Oakland Township, Alameda County, California," filed June 28th, 1887 in Book of Maps, Page 35, in the Office of the County Recorder of said Alameda County.

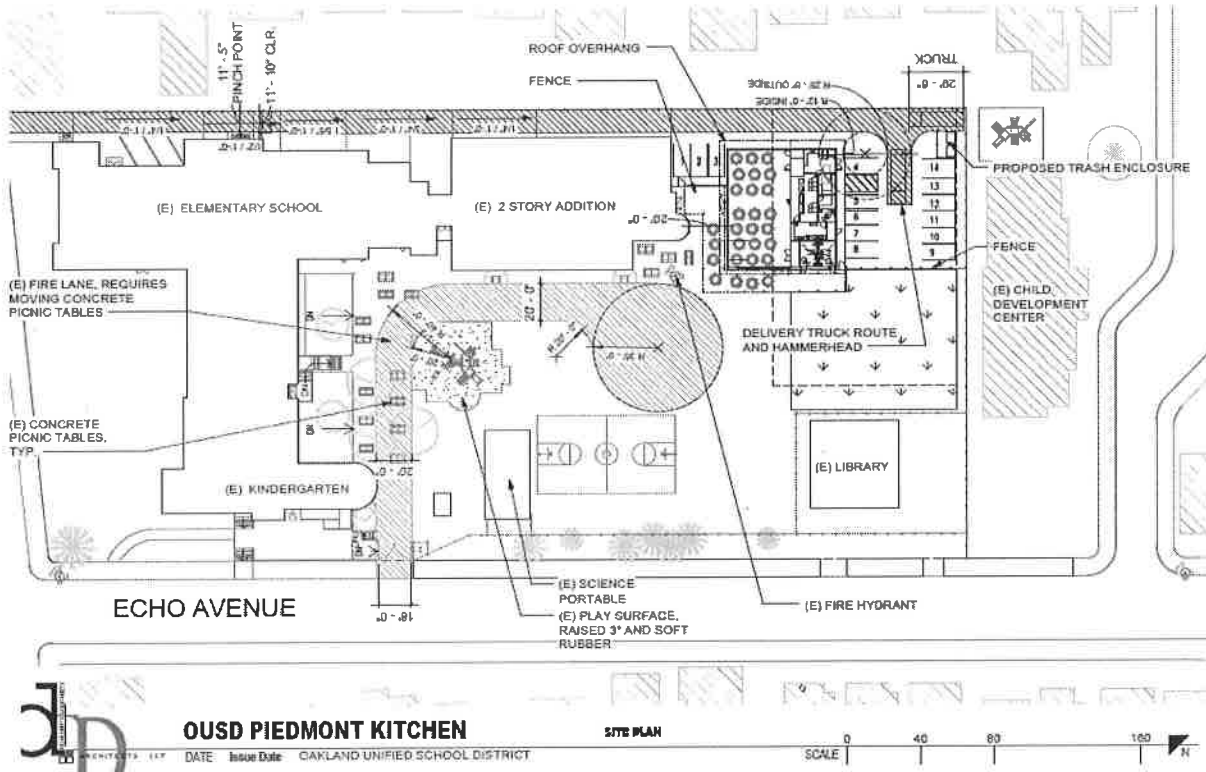
**EXHIBIT "A"**

013-1118-020-01  
PIEDMONT AVENUE ELEM.

**EXHIBIT B**

**DESCRIPTION OF PROJECT SITE**

Attached is a diagram of the School Site that is subject to this Facilities Lease and upon which Developer will construct the Project.



## EXHIBIT C

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

#### **1. Site Lease Payments**

As indicated in the Site Lease, Developer shall pay One Dollar (\$1.00) to the District as consideration for the Site Lease.

#### **2. Guaranteed Maximum Price**

Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for an amount to be determined after the Division of the State Architect ("DSA") approves the plans and specification for the Project ("Guaranteed Maximum Price").

##### **2.1 Cost of the Work**

The term Cost of the Work shall mean the costs necessarily incurred in the proper performance of the Work contemplated by the Contract Documents. Such costs shall be at rates no higher than the standard paid at the place of the Project except with the prior consent of the District. The Cost of the Work shall include only the items set forth in this Section 2 and approved by the District.

##### **2.1.1 General Conditions**

The General Conditions as set forth in **Attachment 1** hereto shall be included in a progress billing as incurred. Said rates shall include all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Developer for insurance, permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, incentives to the extent contemplated in **Attachment 1**, whether required by law or collective bargaining agreements or otherwise paid or provided by Developer to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the District shall be entitled to a reduction in the cost of General Conditions based on the rates set forth in **Attachment 1**.

##### **2.1.2 Subcontract Costs**

Payments made by the Developer to Subcontractors (inclusive of the Subcontractor's bonding, if required, and insurance costs, which shall be included in the subcontract amount), which payments shall be made in accordance with the requirements of the Contract Documents.

**2.1.3.7** Rental charges for temporary facilities, machinery, equipment, vehicles and vehicle expenses, and hand tools not customarily owned by construction workers that are provided by the Developer at the site, whether rented from the Developer or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof and costs of Developer's Project field office, overhead and general expenses including office supplies, parking, office equipment, and software. Rates and quantities of equipment rented shall be subject to the District's prior approval.

**2.1.3.8** Costs of removal of debris from the site, daily clean up costs and dumpster charges not otherwise included in the cost of the subcontracts which exceeds the clean-up provided under the General Conditions.

**2.1.3.9** Costs of that portion of the reasonable travel, parking and subsistence expenses of the Developer's personnel incurred while traveling and discharging duties connected with the Work.

**2.1.3.10** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the District.

**2.1.4 Allowances**

Because it is impossible at the time of execution of the Facilities Lease to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances for the Tasks/Work as noted here:

Task/Work	Allowance Amount
TBD	TBD
TBD	TBD
Unforeseen conditions	TBD
<b>Total Allowance Amount</b>	TBD

The District shall have sole discretion to authorize all expenditures from the Allowances. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive ("AED"). The Allowances are included in the Guaranteed Maximum Price. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work pursuant to **Exhibit D** to this Facilities Lease to the benefit of the District.

**2.1.6.5** Deposits lost for causes other than the Developer's or its subcontractors' negligence or failure to fulfill a specific responsibility to the District as set forth in the Contract Documents.

**2.1.6.6** Expenses incurred in accordance with the Developer's standard personnel policy for relocation and temporary living allowances of personnel required for the Work if approved in advance by District.

**2.1.6.7** Where requested by District, costs or expenses incurred by Developer in performing design services for the design-build systems.

**2.1.6.8** Other costs incurred in the performance of the Work if, and to the extent, approved in advance by District.

**2.1.6.9** Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and/or property.

**2.1.6.10** Provided all other eligible costs have been deducted from the contingency and as part of the calculation of amounts due Developer for Final Payment, costs of repairing and correcting damaged or non-conforming Work executed by the Developer, Subcontractors or suppliers, providing that such damage or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Developer and only to the extent that the cost of repair or correction is not recovered by the Developer from insurance, sureties, Subcontractors or suppliers.

### **2.1.7 Excluded Costs**

The following items are considered general overhead items and shall not be billed to the District:

**2.1.7.1** Salaries and other compensation of the Developer's personnel stationed at Developer's principal office or offices other than the Project Field Office, except as specifically provided in Subparagraphs 2.1.3.2. and 2.1.3.4.

**2.1.7.2** Expenses of the Developer's principal office and offices other than the Project Field Office.

**2.1.7.3** Overhead and general expenses, except as may be expressly included in this Section 2.

**2.1.7.4** The Developer's capital expenses, including interest on the Developer's capital employed for the Work.

**2.1.7.5** Costs that would cause the Guaranteed Maximum Price (as adjusted by Change Order) to be exceeded.



Parties may agree to a reduction or increase in the Guaranteed Maximum Price. If a cost impact of a change is agreed to by the Parties, it shall be paid upon the payment request from the Developer for the work that is the subject of the change in accordance with the provisions of **Exhibit D**. The amount of any change to the Guaranteed Maximum Price shall be calculated in accordance with the provisions of **Exhibit D** to this Facilities Lease.

**2.4.3** The Parties agree to reduce the Guaranteed Maximum Price for the unused portion of the Developer Contingency, if any.

#### **2.4.4 Cost Savings**

Developer shall work cooperatively with Architect, Construction Manager, subcontractors and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the Guaranteed Maximum Price shall be identified by Developer, and approved in writing by the District. If any cost savings require revisions to the Construction Documents, Developer shall work with the District and Architect with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. Developer shall be entitled to an adjustment of Contract Time for delay in completion caused by any cost savings adopted by District pursuant to **Exhibit D**, if requested in writing before the approval of the cost savings.

**2.4.5** If the District exercises its Purchase Option pursuant to this **Exhibit C**, any reduction in the Guaranteed Maximum Price resulting from that exercise of the Purchase Option, if any, shall be retained in full by the District and shall not be shared with the Developer.

**2.4.6** If the Parties agree to a reduction or increase in the Guaranteed Maximum Price, the Loan Amount indicated in **Attachment 3** shall be adjusted accordingly and **Attachment 3** shall be amended prior to the commencement of Lease Payments.

### **3. Tenant Improvement Payments**

Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Developer an amount equal to the Guaranteed Maximum Price as modified pursuant to the terms of the Facilities Lease, including **Exhibit C** and **Exhibit D**, less the Lease Payments ("Tenant Improvement Payments"). Tenant Improvement Payments will be processed based on the amount of Work performed according to the Developer's Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease, including withholding for or escrow of retention of five percent (5%) of the Guaranteed Maximum Price.

### **4. Lease Payments**

Upon execution of the Memorandum of Commencement Date, the form of which is attached to the Facilities Lease as **Exhibit E**, the District shall commence making lease payments to Developer in accordance with the Schedule attached hereto as **Attachment 3**.

are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

**4.4.5** The Developer cannot, under any circumstances, accelerate the District's payments under the Facilities Lease.

**5. District's Purchase Option**

**5.1** If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease by paying the balance of the "Loan Amount" identified in **Attachment 3**, which is exclusive of interest that would have otherwise been owed, as of the date the option is exercised ("Option Price"). Said payment shall be made on or before the date on which the District's lease payment would otherwise be due for that month ("Option Date").

**5.2** District shall provide to Developer a written notice no less than ten (10) days prior to the Option Date. The notice will include that District is exercising its option to purchase the Project as set forth above on the Option Date. If the District exercises this option, the District shall pay directly to Developer the Option Price on or prior to the Option Date and Developer shall at that time deliver to District an executed Termination Agreement and Quitclaim Deed in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

**5.3** Under no circumstances can the first Option Date be on or before ninety (90) days after the Developer completes the Project and the District accepts the Project.

**ATTACHMENT 2**  
**GUARANTEED MAXIMUM PRICE**

TBD.

**EXHIBIT D**

**GENERAL CONSTRUCTION PROVISIONS  
FOR THE FOLLOWING PROJECT:**

**PIEDMONT FINISHING KITCHEN PROJECT**

**BY AND BETWEEN**

**OAKLAND UNIFIED SCHOOL DISTRICT**

**AND**

**VILA TULUM JOINT VENTURES**

Dated as of December \_\_, 2017

## 1. Contract Terms and Definitions

### 1.1 Definitions

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

**1.1.1 Adverse Weather.** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, or extreme temperature conditions in excess of the norm for the location and time of year it occurred based on the closest weather station data averaged over the past five years, (2) that is unanticipated and would cause unsafe work conditions and/or is unsuitable for scheduled work that should not be performed during inclement weather (i.e., exterior finishes), and (3) at the Project.

**1.1.2 Approval, Approved, and/or Accepted.** Written authorization, unless stated otherwise.

**1.1.3 Architect (or "Design Professional in General Charge").** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the Design Professional in General Responsible Charge as defined in DSA PR 13-02 on this Project or the Architect's authorized representative.

**1.1.4 As-Builts.** Reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See **Record Drawings**.

**1.1.5 Change Order.** A written order to the Developer authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Maximum Price or Contract Time.

**1.1.6 Claim.** A Dispute that remains unresolved at the conclusion of all the applicable Dispute Resolution requirements provided herein.

**1.1.7 Completion.** The earliest of the date of acceptance by the District or the cessation of labor thereon for a continuous period of sixty (60) days.

**1.1.8 Construction Change Directive.** A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

**1.1.9 Construction Manager.** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

**1.1.14 Daily Job Report(s).** Daily Project reports prepared by the Developer's employee(s) who are present on Site, which shall include the information required herein.

**1.1.15 Day(s).** Unless otherwise designated, day(s) means calendar day(s).

**1.1.16 Department of Industrial Relations (or "DIR").** DIR is responsible, among other things, for labor compliance monitoring and enforcement of California prevailing wage laws and regulations for public works contracts.

**1.1.17 Design Professional in General Responsible Charge.** See definition of Architect above.

**1.1.18 Developer.** The person or persons identified in the Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

**1.1.19 Dispute.** A separate demand by Developer for a time extension, or payment of money or damages arising from Work done by or on behalf of the Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or Developer is not otherwise entitled to; or an amount of payment disputed by the District.

**1.1.20 District.** The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:

**1.1.20.1** Direct the Developer to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the Developer will communicate with or provide notice to the District; and/or

**1.1.20.2** Direct the Construction Manager or the Architect to communicate with or direct the Developer on matters for which the Contract Documents indicate the District will communicate with or direct the Developer.

**1.1.21 Drawings (or "Plans").** The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

**1.1.22 DSA.** Division of the State Architect.

**1.1.23 Force Account Directive.** A process that may be used when the District and the Developer cannot agree on a price for a specific portion of work or before the Developer prepares a price for a specific portion of work and whereby the Developer performs the work as indicated herein on a time and materials basis.

construction project or projects and/or is an agreement described in Section 158(f) of Title 29 of the United States Code.

**1.1.36 Program Manager.** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for the Project that is the subject of the Contract Documents, then all references to Program Manager herein shall be read to refer to District.

**1.1.37 Proposed Change Order.** A Proposed Change Order ("PCO") is a written request prepared by the Developer requesting that the District, the Construction Manager and the Architect issue a Change Order based upon a proposed change to the Work.

**1.1.38 Provide.** Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

**1.1.39 Qualified SWPPP Practitioners ("QSP").** Certified personnel that attended a State Water Resources Control Board sponsored or approved training class and passed the qualifying exam.

**1.1.40 Record Drawings.** Unless otherwise defined in the Special Conditions, Reproducible drawings (or Plans) prepared pursuant to the requirements of the Contract Documents, that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project. See also **As-Builts**.

**1.1.41 Request for Information ("RFI" or "RFIs").** A written request prepared by the Developer requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the Developer believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

**1.1.42 Request for Substitution for Specified Item.** A request by Developer to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

**1.1.43 Safety Orders.** Written and/or verbal orders for construction issued by the California Division of Occupational Safety and Health ("Cal/OSHA") or by the United States Occupational Safety and Health Administration ("OSHA").

**1.1.44 Safety Plan.** Developer's safety plan specifically adapted for the Project. Developer's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these Construction Provisions.

**1.1.45 Samples.** Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in

the terms or obligations contained in any of the documents comprising the Contract Documents.

#### **1.4 No Assignment**

Except as specifically permitted in the Facilities Lease, Developer shall not assign the Contract Documents or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to become due under the Contract Documents shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with the Contract Documents. Developer shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

#### **1.5 Notice and Service Thereof**

**1.5.1** Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

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

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

**1.5.1.3** If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered five (5) days after date deposited, as indicated by the postmarked date.

**1.5.1.4** 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.

#### **1.6 No Waiver**

The failure of District in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract Documents, nor shall any action or failure to act constitute an approval of or



**1.8.7** Developer warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Developer further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract Documents shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Developer may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Developer shall advise District as to owner thereof.

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

**1.8.9** Title to new materials and/or equipment for the Work of the Contract Documents and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of the Contract Documents and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract Documents. Should the District, in its discretion, allow the Developer to store materials and/or equipment for the Work off-site, Developer will store said materials and/or equipment at a bonded warehouse and with appropriate insurance coverage at no cost to District. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

**2. [Reserved]**

**3. Architect**

**3.1** The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract Documents.

**3.2** Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

each and every aspect of the Work. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>. Inspection of Work shall not relieve Developer from an obligation to fulfill the Contract Documents. Project Inspector(s) and the DSA are authorized to suspend work whenever the Developer and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Developer shall instruct its Subcontractors and employees accordingly.

**5.1.3** If Developer and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-Site, this shall only be done if it is allowable pursuant to applicable regulations and DSA approval, if the Project Inspector(s) agree to do so, and at the expense of the Developer.

## **5.2 Tests and Inspections**

**5.2.1** Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

**5.2.2** The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Developer. The Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection. This notice shall be provided, at a minimum, seventy-two (72) hours prior to the inspection of the material that needs to be tested.

**5.2.3** The Developer shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents that must by terms of the Contract Documents be tested so that the District may arrange for the testing of same at the source of supply. This notice shall be provided, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

**5.2.4** Any material shipped by the Developer from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

**5.2.5** The District will select the testing laboratory and pay for the costs for all tests and inspections. Developer shall reimburse the District for any and all laboratory costs or other testing costs for any materials found to be not in compliance with the Contract Documents. At the District's discretion, District may elect to deduct laboratory or other testing costs for noncompliant materials from the Guaranteed Maximum Price, and such deduction shall not constitute a withholding.

## **5.3 Costs for After Hours and/or Off Site Inspections**

If the Developer performs Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be borne by the

### **6.3 Developer's Supervision**

**6.3.1** During progress of the Work, Developer shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, an experienced and competent project manager and construction superintendent who are employees of the Developer, to whom the District does not object and at least one of whom shall be fluent in English, written and verbal.

**6.3.2** The project manager and construction superintendent shall both speak fluently the predominant language of the Developer's employees.

**6.3.3** Before commencing the Work herein, Developer shall give written notice to District of the name of its project manager and construction superintendent. Neither the Developer's project manager nor construction superintendent shall be changed except with prior written notice to District. If the Developer's project manager and/or construction superintendent proves to be unsatisfactory to Developer, or to District, any of the District's employees, agents, the Construction Manager, or the Architect, Developer shall immediately notify District in writing before any change occurs, but no less than two (2) business days prior. Any replacement of the project manager and/or construction superintendent shall be made promptly and must be satisfactory to the District. The Developer's project manager and construction superintendent shall each represent Developer, and all directions given to Developer's project manager and/or construction superintendent shall be as binding as if given to Developer.

**6.3.4** Developer shall give efficient supervision to Work, using its best skill and attention. Developer shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Developer or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). Developer shall have responsibility for discovery of errors, inconsistencies, or omissions.

**6.3.5** All contractors doing work on the Project will provide their workers with identification badges. These badges will be worn by all members of the contractor's staff who are working in a District facility.

**6.3.5.1** Badges must be filled out in full and contain the following information:

**6.3.5.1.1** Name of contractor

**6.3.5.1.2** Name of employee

**6.3.5.1.3** Contractor's address and phone number

**6.3.5.2** Badges are to be worn when the Developer or his/her employees are on site and must be visible at all times. Contractors must inform their employees that they are required to allow District employees, the Architect, the Construction Manager, the Program

duties of Contractor, Title 24, Part 1, California Code of Regulations, Section 4-343.) Developer shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Titles 8 and 17. Developer shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of Title 24.

#### **6.7.2 Daily Job Reports**

**6.7.2.1** Developer shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the Developer's employee(s) who are present on Site, and must include, at a minimum, the following information:

**6.7.2.1.1** A brief description of all Work performed on that day.

**6.7.2.1.2** A summary of all other pertinent events and/or occurrences on that day.

**6.7.2.1.3** The weather conditions on that day.

**6.7.2.1.4** A list of all Subcontractor(s) working on that day, including DIR registration numbers.

**6.7.2.1.5** A list of each Developer employee working on that day and the total hours worked for each employee.

**6.7.2.1.6** A complete list of all equipment on Site that day, whether in use or not.

**6.7.2.1.7** A complete list of all materials, supplies, and equipment delivered on that day.

**6.7.2.1.8** A complete list of all inspections and tests performed on that day.

**6.7.2.2** Each day Developer shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

#### **6.8 Preservation of Records**

Developer shall maintain, and District shall have the right to inspect, Developer's financial records for the Project, including, without limitation, Job Cost Reports for the Project in compliance with the criteria set forth herein. The District shall have the right to examine and audit all Daily Job Reports or other Project records of Developer's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, Job Cost Reports, payroll, payment, timekeeping and tracking documents; and as it pertains to change orders, all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Developer, any Subcontractor, and/or supplier, including computations and

## **6.11 Obtaining of Permits, Licenses and Registrations**

Developer shall secure and pay for any permits (except DSA), licenses, registrations, approvals, and certificates necessary for prosecution of Work, including but not limited to those listed in the Special Conditions, Exhibit D-1, if any, before the date of the commencement of the Work or before the permits, licenses, registrations, approvals and certificates are legally required to continue the Work without interruption. The Developer shall obtain and pay, only when legally required, for all licenses, approvals, registrations, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract Documents. All final permits, licenses, registrations, approvals and certificates shall be delivered to District before demand is made for final payment. The costs associated with said permits, licenses, registrations, approvals and certificates shall be direct reimbursement items and are not subject to any markup.

## **6.12 Royalties and Patents**

**6.12.1** Developer shall obtain and pay, when legally required, all royalties and license fees necessary for prosecution of Work before the earlier of the date of the commencement of the Work or the date the license is legally required to continue the Work without interruption. Developer shall defend suits or claims of infringement of patent, copyright, or other rights and shall hold the District, Construction Manager and the Architect harmless and indemnify them from loss on account thereof except when a particular design, process, or make or model of product is required by the Contract Documents. However, if the Developer has reason to believe that the required design, process, or product is an infringement of a patent or copyright, the Developer shall indemnify and defend the District, Construction Manager and Architect against any loss or damage.

**6.12.2** The review by the District, Construction Manager or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be only as to its adequacy for the Work and shall not constitute approval by the Developer in violation of any patent or other rights of any person or entity.

## **6.13 Work to Comply With Applicable Laws and Regulations**

**6.13.1** Developer shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Developer observes that Drawings and Specifications are at variance with any applicable laws, ordinances, rules and regulations, or should Developer become aware of the development of conditions not covered by Contract Documents that may result in finished Work being at variance therewith, Developer shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in this Exhibit D for changes in Work.

**6.13.1.1** National Electrical Safety Code, U. S. Department of Commerce

**6.14.2** The wearing of hard hats will be mandatory at all times for all personnel on Site. Developer shall supply sufficient hard hats to properly equip all employees and visitors.

**6.14.3** Any construction review of the Developer's performance is not intended to include review of the adequacy of the Developer's safety measures in, on, or near the Work Site.

**6.14.4** Implementation and maintenance of safety programs shall be the sole responsibility of the Developer.

**6.14.5** The Developer shall furnish to the District a copy of the Developer's safety plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.

**6.14.6** Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract Documents and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Developer's risk.

**6.14.7** Developer shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Developer shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

**6.14.8** Hazards Control –Developer shall store volatile wastes in approved covered metal containers and remove them from the Site daily. Developer shall prevent accumulation of wastes that create hazardous conditions. Developer shall provide adequate ventilation during use of volatile or noxious substances.

**6.14.9** Developer shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Developer.

**6.14.10** Developer shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Developer shall correct such violation promptly.

will be permitted. District may require Developer to permanently remove non-complying persons from Project Site.

**6.14.20** Developer shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Developer shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

**6.14.21** In the event that the Developer enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Developer shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. The Developer shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

#### **6.15 General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("General Permit")**

**6.15.1** Developer acknowledges that all California school districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities (storm water requirements), without limitation:

**6.15.1.1** A Municipal Separate Storm Sewer System (MS4). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

**6.15.1.2** A Storm Water Pollution Prevention Plan ("SWPPP") that contains specific best management practices ("BMPs") and establishes numeric effluent limitations at:

**6.15.1.2.1** Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) or transportation activities.

**6.15.1.2.2** Construction sites where:

**6.15.1.2.2.1** One (1) or more acres of soil will be disturbed, or

**6.15.1.2.2.1.1** The Project is part of a larger common plan of development that disturbs more than one (1) acre of soil.

**6.15.2** Developer shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

**6.17.3** If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Developer a 24-hour written notice to mitigate the condition.

**6.17.4** Should the Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Maximum Price, or District may withhold those amounts from payment(s) to Developer.

## **7. Subcontractors**

**7.1** Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors as indicated in the Developer's Submittals and Schedules Section herein.

**7.2** No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract Documents.

**7.3** Developer agrees to bind every Subcontractor by terms of the Contract Documents as far as those terms that are applicable to Subcontractor's work including, without limitation, all labor, wage & hour, apprentice and related provisions and requirements. If Developer subcontracts any part of the Work called for by the Contract Documents, Developer shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, including Subcontractor caused Project delays, as it is for acts and omissions of persons directly employed by Developer. The divisions or sections of the Specifications and/or the arrangements of the drawings are not intended to control the Developer in dividing the Work among Subcontractors or limit the work performed by any trade.

**7.4** District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract Documents shall not in any way relieve Developer of any obligations under the Contract Documents and no such consent shall be deemed to waive any provisions of the Contract Documents.

**7.5** Developer is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein including, without limitation, section 1775 and the Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

**7.6** Developer shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

**7.6.1** Developer is responsible for ensuring that first-tier Subcontractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses, are prequalified by the District to work on the Project pursuant to Public Contract Code section 20111.6.



## **9. Drawings and Specifications**

**9.1** A complete list of all Drawings that form a part of the Contract Documents are to be found as an index on the Drawings themselves, and/or may be provided to the Developer and/or in the Table of Contents.

**9.2** Materials or Work described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

**9.3** Trade Name or Trade Term

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Developer that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

**9.4** The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

**9.5** Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Developer observes that Drawings and Specifications are in conflict with the Contract Documents, Developer shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

**9.6** Figured dimensions shall be followed in preference to scaled dimensions, and the Developer shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, each Developer shall verify all measurements at the building and shall be responsible for the correctness of same.

**9.7** Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity of material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications.

**9.8** Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where

**10.1.6** Within TEN (10) calendar days after the date of the issuance of the Notice to Proceed with Construction, the Developer shall prepare and submit to the District for review, in a form supported by sufficient data to substantiate its accuracy as the District may require:

**10.1.6.1** Preliminary Schedule

A preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once approved by District, this shall become the Construction Schedule. This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task as well as all Contract milestones and each milestone's completion date(s) as may be required by the District.

**10.1.6.2** Preliminary Schedule of Values

A preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Unless the Special Conditions contain different limits, this preliminary schedule of values shall include, at a minimum, the following information and the following structure:

**10.1.6.2.1** Divided into at least the following categories:

**10.1.6.2.1.1** Overhead and profit

**10.1.6.2.1.2** Supervision

**10.1.6.2.1.3** General conditions

**10.1.6.2.1.4** Layout

**10.1.6.2.1.5** Mobilization

**10.1.6.2.1.6** Submittals

**10.1.6.2.1.7** Bonds and insurance

**10.1.6.2.1.8** Close-out/Certification documentation

**10.1.6.2.1.9** Demolition

**10.1.6.2.1.10** Installation

**10.1.6.2.1.11** Rough-in

**10.1.6.2.1.12** Finishes

Values. The Schedule of Values shall not be thereafter modified or amended by the Developer without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

#### **10.1.6.3 Schedule of Values**

The Developer shall provide for District review and approval prior to commencement of the Work a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Maximum Price and subdivided into component parts as per specifications. The Schedule of Values shall not be modified or amended by the Developer without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

#### **10.1.6.4 Preliminary Schedule of Submittals**

A preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by District, this shall become the Submittal Schedule. All submittals shall be forwarded to the District by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be forwarded to the District so as not to delay the Construction Schedule. Upon request by the District, Developer shall provide an electronic copy of all submittals to the District. All submittals shall be submitted no later than 90 days after the issuance of the Notice to Proceed with Construction.

#### **10.1.6.5 Safety Plan**

Developer's Safety Plan specifically adapted for the Project shall comply with the following requirements:

**10.1.6.5.1** All applicable requirements of California Division of Occupational Safety and Health ("Cal/OSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

**10.1.6.5.2** All provisions regarding Project safety, including all applicable provisions in these Construction Provisions.

**10.1.6.5.3** Developer's Safety Plan shall be in English and in the language(s) of the Developer's and its Subcontractors' employees.

#### **10.1.6.6 Complete Registered Subcontractors List**

The name, address, telephone number, facsimile number, California State Contractors License number, classification, DIR registration

## **11.2 Soils Investigation Report**

When a soils investigation report obtained from test holes at Site or for the Project is available, that report may be made available to the Developer but shall not be a part of this Contract but shall not alleviate or excuse Developer's obligation to perform its own investigation. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract, and Developer may not rely thereon. Developer acknowledges that it has made a visual examination of the Site and will make whatever tests Developer deems appropriate to determine underground condition of soil by date of submission of GMP.

## **11.3 Access to Work**

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Developer shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

## **11.4 Layout and Field Engineering**

**11.4.1** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Developer at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by District and Architect. Any required Record and/or As-Built Drawings of Site development shall be prepared by the approved civil engineer.

**11.4.2** The Developer shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Developer's error or negligence in acquainting itself with the conditions at the Site.

**11.4.3** Developer shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Developer shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

## **11.5 Utilities**

Utilities shall be provided as indicated in the Specifications.

## **11.6 Sanitary Facilities**

Sanitary facilities shall be provided as indicated in the Specifications.

**11.9.4** If Developer, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Developer shall immediately notify the District and the utility in writing. In the event Developer fails to immediately provide notice and subsequently causes damage to the utility facilities, the cost of repair for damage to above-mentioned visible facilities shall be borne by the Developer.

#### **11.10 Notification**

Developer understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Developer to promptly notify the District in writing, pursuant to these provisions, shall constitute Developer's waiver of any claim for damages or delay incurred as a result of the condition(s).

#### **11.11 Hazardous Materials**

Developer shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

#### **11.12 No Signs**

Neither the Developer nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences, trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

### **12. Trenches**

#### **12.1 Trenches Greater Than Five Feet**

Pursuant to Labor Code section 6705, if the Guaranteed Maximum Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Developer shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

#### **12.2 Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

#### **12.3 No Tort Liability of District**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

**13.2.1.1 Performance Bond**

A bond in an amount at least equal to one hundred percent (100%) of Guaranteed Maximum Price as security for faithful performance of the Contract Documents.

**13.2.1.2 Payment Bond**

A bond in an amount at least equal to one hundred percent (100%) of the Guaranteed Maximum Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**13.2.2** Cost of bonds shall be included in the Guaranteed Maximum Price.

**13.2.3** All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

**14. Warranty/Guarantee/Indemnity**

**14.1 Warranty/Guarantee**

**14.1.1** The Developer shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

**14.1.2** In addition to guarantees and warranties required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of ONE (1) year after the later of the following dates, unless a longer period is provided for in the Contract Documents:

**14.1.2.1** The acceptance by the District, or its agent, of the Work, subject to these General Conditions, or

**14.1.2.2** The date that commissioning for the Project, if any, was completed.

**14.1.3** If any work is not in compliance with the Drawings and Specifications, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a ONE (1) year period from date of completion as defined above, unless a longer period is provided for in the Contract Documents, without expense whatsoever to District.

**14.1.4** In the event of failure of Developer and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Developer and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Developer and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

obligated to pay Developer for the Work that Developer had performed at the time of notification of postponement.

## **15.2 Computation of Time / Adverse Weather**

**15.2.1** The Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer in compliance with the time extension request procedures and only if all of the following conditions are met:

**15.2.1.1** The weather conditions constitute Adverse Weather, as defined herein.

**15.2.1.2** Developer can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather.

**15.2.1.3** The Developer's crew is dismissed as a result of the Adverse Weather;

**15.2.1.4** Said delay adversely affect the critical path in the Construction Schedule; and

**15.2.1.5** The number of days of delay for the month the following parameters:

January	6	July	0
February	5	August	0
March	5	September	1
April	4	October	1
May	1	November	3
June	0	December	5

**15.2.2** If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated herein.

**15.2.3** The Developer shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

**15.2.4** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

## **15.3 Hours of Work**

**15.3.1** Sufficient Forces

## **16. Extensions of Time – Liquidated Damages**

### **16.1 Liquidated Damages**

Developer and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Developer shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay in Completion. Developer and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

### **16.2 Excusable Delay**

**16.2.1** Developer shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Developer or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Developer shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the cause and effect. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Developer has timely submitted the Construction Schedule as required herein.

**16.2.2** Developer shall notify the District pursuant to the claims provisions in these Construction Provisions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

**16.2.3** In the event the Developer requests an extension of Contract Time for unavoidable delay as set forth in subparagraph 16.2.1, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Developer fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

**16.2.3.1** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.



**17. Changes in the Work**

**17.1 No Changes without Authorization**

**17.1.1** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive in advance of the changed Work being performed. No extension of time for performance of the Work shall be allowed hereunder unless a request for such extension is made at the time changes in the Work are ordered, and such time duly adjusted and approved in writing in the Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**17.1.2** Developer shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Developer shall be fully responsible for any and all delays and/or expenses caused by Developer's failure to expeditiously perform this Work.

**17.1.3** Should any Change Order result in an increase in the Guaranteed Maximum Price or extend the Contract Time, the cost of or length of extension in that Change Order shall be agreed to, in writing, by the District in advance of the work by Developer. In the event that Developer proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Developer waives any claim of additional compensation or time for that additional work. Under no circumstances shall Developer be entitled to any claim of additional compensation or time not expressly requested by Developer in a Proposed Change Order or approved by District in an executed Change Order.

**17.1.4** Developer understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

**17.2 Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Maximum Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Construction Change Directive, or by Architect's response(s) to RFI(s), or by Architect's Supplemental Instructions ("ASI").

### **17.4.3 Changes in Time**

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Developer fails to request a time extension in a PCO, then the Developer is thereafter precluded from requesting, and waives any right to request, additional time and/or claiming a delay. In no case shall Developer or any of its Subcontractors be permitted to reserve rights for additional time for Change Order Work. A PCO that leaves the amount of time requested blank, or states that such time requested is "to be determined", is not permitted and shall also constitute a waiver of any right to request additional time and/or claim a delay.

### **17.4.4 Unknown and/or Unforeseen Conditions**

If Developer submits a PCO requesting an increase in Guaranteed Maximum Price and/or Contract Time that is based at least partially on Developer's assertion that Developer has encountered unknown and/or unforeseen condition(s) on the Project, then Developer shall base the PCO on provable information that, beyond a reasonable doubt and to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen. If not, the District shall deny the PCO as unsubstantiated, and the Developer shall complete the Project without any increase in Guaranteed Maximum Price and/or Contract Time based on that PCO.

## **17.5 Proposed Change Order Certification**

In submitting a PCO, Developer certifies and affirms that the cost and/or time request is submitted in good faith, that the cost and/or time request is accurate and in accordance with the provisions of the Contract Documents, and the Developer submits the cost and/or request for extension of time recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim under Government Code section 12650, *et seq.*

## **17.6 Format for Proposed Change Order**

**17.6.1** The format at section 17.6 shall be used as applicable by the District and the Developer (e.g. Change Orders, PCOs) to communicate proposed additions and/or deductions to the Contract, supported by attached documentation.

### **17.6.2 Labor**

Developer shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work. Labor costs shall exclude costs incurred by the Developer in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and

such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector, Construction Manager and the District, the allowable rate for the use of Equipment in connection with the Work shall constitute full compensation to the Developer for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Equipment operator), and any and all other costs incurred by the Developer incidental to the use of the Equipment.

**17.6.5 Overhead and Profit.**

The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, and general field and home office expenses.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

	<b><u>DEVELOPER PERFORMED WORK</u></b>		
(a)	<b><u>Material</u></b> (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully encumbered)		
(c)	<b><u>Add Equipment</u></b> (attach suppliers' invoice)		
(d)	<b><u>Subtotal</u></b>		
(e)	<b>Add Developer's overhead and profit</b> , not to exceed fifteen percent (15%) of <b>Item (d)</b> .		
(f)	<b><u>Subtotal</u></b>		
(g)	<b><u>Add Bond and Insurance</u></b> , at Developer's Cost, not to exceed two and two thousand, five hundred fifty-four ten-thousandths (2.2554%) of <b>Item (h)</b>		
(h)	<b><u>TOTAL</u></b>		
(i)	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	<b>___ Calendar Days</b>	

## 17.8 Change Order Certification

**17.8.1** All Change Orders, CORs, and PCOs must include the following certification by the Developer:

The undersigned Developer approves the foregoing as to the changes, if any, and to the Guaranteed Maximum Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. and U.S. Criminal Code, 18 U.S.C. § 1001. It is understood that the changes herein to the Contract Documents shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

## **17.12 Construction Change Directives**

**17.12.1** A Construction Change Directive is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may, as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. The adjustment to the Guaranteed Maximum Price or Contract Time, if any, is subject to the provision of this section regarding Changes in the Work. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board ("SAB"), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction ("OPSC"). Any dispute as to the adjustment of the Guaranteed Maximum Price, if any, of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

**17.12.2** The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

## **17.13 Force Account Directives**

**17.13.1** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the Developer for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

**17.13.2** The District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District.

**17.13.3** All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

**17.13.4** The Developer shall be responsible for all costs related to the administration of Force Account Directives. The markup for overhead and profit for Developer modifications shall be full compensation to the Developer to administer Force Account Directives, and Developer shall not be entitled to separately recover additional amounts for overhead and/or profit.

**17.13.5** The Developer shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the Developer shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. The Developer will not be compensated for force account work in the event that the Developer fails to timely notify the District regarding the

In the event that the Developer fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records, the District's determination of the extent of adjustment to the Contract Price shall be final, conclusive, dispositive and binding upon Developer.

#### **17.16 Notice Required**

If the Developer desires to make a claim for an increase in the Guaranteed Maximum Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein, including the Article on Claims and Disputes. No claim shall be considered unless made in accordance with this subparagraph. Developer shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Maximum Price or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

#### **17.17 Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders or Construction Change Directives issued to Subcontractors by the Developer to the extent required by the Contract Documents.

#### **17.18 Alteration to Change Order Language**

Developer shall not alter Change Orders or reserve time in Change Orders. Change Orders altered in violation of this provision, if in conflict with the terms set forth herein, shall be construed in accordance with the terms set forth herein. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

#### **17.19 Failure of Developer to Execute Change Order**

Developer shall be in default of the Contract Documents if Developer fails to execute a Change Order when the Developer agrees with the addition and/or deletion of the Work in that Change Order.

### **18. Requests For Information**

**18.1** Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Developer shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Maximum Price, Contract Time, or the Contract Documents.

**18.2** The Developer may be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Developer, if a Request for Information requests an interpretation or decision of a matter where the information sought is equally available to the party making the request. District may deduct from and/or invoice Developer for professional services arising therefrom.

**19.2.1.1.10** The percentage of completion of the Developer's Work by line item.

**19.2.1.1.11** Schedule of Values updated from the preceding Application for Payment.

**19.2.1.1.12** A duly completed and executed conditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 8132 from the Developer and each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment.

**19.2.1.1.13** A duly completed and executed unconditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 8134 from the Developer and each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment submitted 60 days prior; and

**19.2.1.1.14** A certification by the Developer of the following:

The Developer warrants title to all Work performed as of the date of this payment application and that all such Work has been completed in accordance with the Contract Documents for the Project. The Developer further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Developer, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed. Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 *et seq.*

**19.2.1.1.15** The Developer shall be subject to the False Claims Act set forth in Government Code section 12650 *et seq.* for information provided with any Application for Tenant Improvement Payments.

**19.2.1.1.16** All certified payroll records ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, the District may not make any payment to Developer until:

**19.2.1.1.16.1** Developer and/or its Subcontractor(s) provide electronic CPRs weekly for all weeks any journeyman, apprentice, worker or other employee was employed in connection with the Work directly to the

### **19.2.3 Subsequent Payment Requests**

The District will not process subsequent payment requests until and unless submittals and Shop Drawings necessary to maintain the Project schedule have been submitted to the Architect.

### **19.2.4 No Waiver of Criteria**

Any payments made to Developer where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Developer may pay its Subcontractors and suppliers. Developer agrees that failure to submit such items may constitute a breach of contract by Developer and may subject Developer to termination.

## **19.3 District's Approval of Application for Payment**

**19.3.1** Upon receipt of an Application for Payment, The District shall act in accordance with both of the following:

**19.3.1.1** Each Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

**19.3.1.2** Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

**19.3.2** An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the District.

**19.3.3** The District's review of the Developer's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

**19.3.3.1** Observation of the Work for general conformance with the Contract Documents.

**19.3.3.2** Results of subsequent tests and inspections.



indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Developer under the Contract.

## **19.4 Decisions to Withhold Payment**

### **19.4.1 Reasons to Withhold Payment**

The District shall withhold payment in whole, or in part, as required by statute. In addition, the District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. Payment, in whole, or in part, will be withheld based on the need to protect the District from loss because of, but not limited to, any of the following:

**19.4.1.1** Defective Work not remedied within FORTY-EIGHT (48) hours of written notice to Developer.

**19.4.1.2** Stop Payment Notices or other liens served upon the District as a result of the Contract.

**19.4.1.3** Failure to comply with the District's Project Labor Agreement.

**19.4.1.4** Liquidated damages assessed against the Developer.

**19.4.1.5** The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Maximum Price or by the Contract Time.

**19.4.1.6** Damage to the District or other contractor(s).

**19.4.1.7** Unsatisfactory prosecution of the Work by the Developer.

**19.4.1.8** Failure to store and properly secure materials.

**19.4.1.9** Failure of the Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

**19.4.1.10** Failure of the Developer to maintain As-Built Drawings.

**19.4.1.11** Erroneous estimates by the Developer of the value of the Work performed, or other false statements in an Application for Payment.

**19.4.1.12** Unauthorized deviations from the Contract Documents.

#### **19.4.2 Reallocation of Withheld Amounts**

**19.4.2.1** District may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Developer. If any payment is so made by District, then that amount shall be considered a payment made under the Contract Documents by District to Developer and District shall not be liable to Developer for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Developer an accounting of funds disbursed on behalf of Developer.

**19.4.2.2** If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after FORTY-EIGHT (48) hours' written notice to the Developer and opportunity to commence and pursue cure of default, and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Maximum Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with the provisions of the Contract Documents, an equitable reduction in the Guaranteed Maximum Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

#### **19.4.3 Payment After Cure**

When Developer removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Developer to perform in accordance with the terms and conditions of the Contract Documents.

### **19.5 Subcontractor Payments**

#### **19.5.1 Payments to Subcontractors**

No later than seven (7) days after receipt of any Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Developer shall pay to each Subcontractor, out of the amount paid to the Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

#### **19.5.2 No Obligation of District for Subcontractor Payment**

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

#### **19.5.3 Joint Checks**

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

#### **20.2.2.2 As-Builts/Record Drawings and Record Specifications**

**20.2.2.2.1** Developer shall provide exact "as-built" drawings of the Work upon completion of the Project as indicated in the Contract Documents, including but not limited to the Specifications ("As-Built Drawings") as a condition precedent to approval of final payment. Developer will provide redline drawings to the Architect in order to incorporate into the CAD as built.

**20.2.2.2.2** Developer is liable and responsible for any and all inaccuracies in the As-Built Drawings, even if inaccuracies become evident at a future date.

**20.2.2.2.3** Upon completion of the Work and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints and Developer will provide redline drawings to the Architect in order to incorporate into the CAD as built.

#### **20.2.3 Maintenance Manuals**

Developer shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

#### **20.2.4 Source Programming**

Developer shall provide all source programming for all items in the Project.

#### **20.2.5 Verified Reports**

Developer shall completely and accurately fill out and file forms DSA 6-C or DSA 152 (or most current version applicable at the time the Work is performed), as appropriate. Refer to section 4-336 and section 4-343 of Part 1, Title 24 of the California Code of Regulations.

### **20.3 Final Inspection**

**20.3.1** Developer shall comply with Punch List procedures as provided herein, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Developer demobilize its forces prior to completion of the Punch List without District's prior written approval. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents.

## **20.4 Costs of Multiple Inspections**

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Developer and if funds are available, withheld from remaining payments.

## **20.5 Partial Occupancy or Use Prior to Completion**

### **20.5.1 District's Rights to Occupancy**

The District may occupy or use any completed or partially completed portion of the Work at any stage, and such occupancy shall not constitute the District's Final Acceptance of any part of the Work. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Developer or the Developer's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Developer shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it needs or desires to use.

### **20.5.2 Inspection Prior to Occupancy or Use**

Immediately prior to partial occupancy or use, the District, the Developer, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

### **20.5.3 No Waiver**

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

## **21. Final Payment and Retention**

### **21.1 Final Payment**

Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment. The District shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the Developer in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Developer as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Developer

**21.3.1.1** After approval by the District of the Architect of the Application and Certificate of Payment.

**21.3.1.2** After the satisfaction of the conditions set forth herein.

**21.3.1.3** No less than forty-five (45) days after the recording of the Notice of Completion by District; and

**21.3.1.4** After receipt of a duly completed and executed unconditional waiver and release upon Final Payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the Final Payment.

**21.3.2** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Developer to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Developer pursuant to Public Contract Code section 22300.

#### **21.4 Substitution of Securities**

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

#### **22. Uncovering of Work**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be corrected, replaced and/or recovered at the Developer's expense without change in the Guaranteed Maximum Price or Contract Time.

#### **23. Nonconforming Work and Correction of Work**

##### **23.1 Nonconforming Work**

**23.1.1** Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

**23.1.2** If Developer does not commence to remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed FORTY-EIGHT (48) hours after written notice and complete removal of work within a reasonable time, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

issue a deductive Change Order, a Construction Change Directive, or invoice the Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

## **24. Termination And Suspension**

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

## **25. Claims Process**

### **25.1 Performance during Claim Process**

Developer and its subcontractors shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

### **25.2 Definition of Claim**

**25.2.1** Pursuant to Public Contract Code section 9204, the term "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

**25.2.1.1** A time extension, including without limitation, for relief of damages or penalties for delay assessed by the District under the Contract;

**25.2.1.2** Payment by the District of money or damages arising from work done by, or on behalf of, the Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Developer is not otherwise entitled to; or

**25.2.1.3** An amount of payment disputed by the District.

### **25.3 Claims Presentation**

**25.3.1** If Developer intends to apply for an increase in the Guaranteed Maximum Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Developer shall, within thirty (30) days after the event giving rise to the Claim, give notice of the Claim in writing, including an itemized statement of the details and amounts of its Claim for any increase in the Guaranteed Maximum Price or time requested, including a Schedule Analysis and any and all other documentation substantiating Contractor's claimed damages. Otherwise, Developer shall have waived and relinquished its dispute against the District and Developer's claims for compensation or an extension of time shall be forfeited and invalidated.

- Contractor a written statement identifying the disputed portion and the undisputed portion.

**25.4.1.1.1** Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

**25.4.1.2** Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Developer must comply with the sections below regarding Public Contract Code section 20104 et seq. and Government Code Claim Act Claims.

**25.4.1.3** If the District fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of Developer.

#### **25.4.2 STEP 2:**

**25.4.2.1** If Developer disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Developer may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

**25.4.2.2** Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

**25.5.3** Developer shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against Claims by Subcontractors.

## **25.6 Government Code Claim Act Claim**

**25.6.1** If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements, including those pursuant to Public Contract Code section 9204, the Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Developer's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Developer submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

## **25.7 Claim Resolution pursuant to Public Contract Code section 20104 et seq.**

**25.7.1** In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between Contractor and District by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.

**25.7.1.1** Developer shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

**25.7.1.2** For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the Developer.

**25.7.1.2.1** If additional information is required, it shall be requested and provided by mutual agreement of the parties.

**25.7.1.2.2** District's written response to the documented Claim shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Developer to produce the additional information, whichever is greater.

**25.7.1.3** For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional



brought under this subdivision consistent with the rules pertaining to judicial arbitration.

**25.7.1.8** The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

**25.7.2** Developer shall bind its Subcontractors to the provisions of this Section and will hold the District harmless against disputes by Subcontractors.

## **25.8 Claim Resolution Non-Applicability**

**25.8.1** The procedures for dispute and claim resolution set forth in this Article shall not apply to the following:

**25.8.1.1** Personal injury, wrongful death or property damage claims.

**25.8.1.2** Latent defect or breach of warranty or guarantee to repair.

**25.8.1.3** Stop payment notices.

**25.8.1.4** District's rights set forth in the Article on Suspension and Termination.

**25.8.1.5** Disputes arising out of labor compliance enforcement by the Department of Industrial Relations; or

**25.8.1.6** District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

## **25.9 Attorney's Fees**

**25.9.1** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

## **26. State Labor, Wage & Hour, Apprenticeship, and Related Provisions**

### **26.1 Labor Compliance and Enforcement**

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Developer specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the Developer and all Subcontractors shall timely furnish complete and accurate

**26.2.7** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.

**26.2.8** Developer shall post at appropriate conspicuous points on the Project Site a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Developer shall post a sign-in log for all workers and visitors to the Site, a list of all Subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

### **26.3 Hours of Work**

**26.3.1** As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day of work. The time of service of any worker employed at any time by Developer or by any Subcontractor on any subcontract under the Contract Documents upon the Work or upon any part of the Work contemplated by the Contract Documents shall be limited and restricted by Developer to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Developer in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**26.3.2** Developer shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Developer in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

**26.3.3** Pursuant to Labor Code section 1813, Developer shall, as a penalty, forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) to the District for each worker employed in the execution of the Contract Documents by Developer or by any Subcontractor for each calendar day during which a worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code.

**26.3.4** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

### **26.4 Payroll Records**

**26.4.1** Developer shall upload, and shall cause each Subcontractor performing any portion of the Work under this Contract to upload, an accurate and complete certified payroll record ("CPR") electronically using DIR's eCPR

address of Developer awarded the Project under the Contract Documents or performing under the Contract Documents shall not be marked or obliterated.

**26.4.5** Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days of a change in location of the records, provide a notice of change of location and address.

**26.4.6** In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty, forfeit up to one hundred dollars (\$100) to District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from Tenant Improvement Payments then due.

**26.5 [Reserved]**

**26.6 Apprentices**

**26.6.1** Developer acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

**26.6.2** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

**26.6.3** Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

**26.6.4** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

**26.6.5** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Developer or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

## **26.9 Labor First Aid**

Developer shall maintain emergency first aid treatment for Developer's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

## **27. [Reserved]**

## **28. Miscellaneous**

### **28.1 Assignment of Antitrust Actions**

Although this project may not have been formally bid, the following provisions may apply:

#### **28.1.1** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

#### **28.1.2** Section 4552 of the Government Code states in pertinent part:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

#### **28.1.3** Section 4553 of the Government Code states in pertinent part:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

**EXHIBIT D-1**

**SPECIAL CONDITIONS**

**Attached are the special terms and conditions for the Project.**

## **EXHIBIT D-1**

### **SPECIAL CONDITIONS**

#### **1. Mitigation Measures**

Developer shall comply with all applicable mitigation measures, as follows, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.), including without limitation the "Conditions of Approval" attached hereto and incorporated herein.

*[Conditions of Approval attached starting on page 6.]*

#### **2. Modernization Projects**

##### **2.1 Access.**

Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Developer's Work, the overtime wages for the custodian will be paid by the Developer, unless at the discretion of the District, other arrangements are made in advance.

##### **2.2 Master Key.**

Upon request, the District may, at its own discretion, provide a master key to the school site for the convenience of the Developer. The Developer agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the master key is lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.

##### **2.3 Maintaining Services.**

The Developer is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Developer shall provide temporary services to all facilities interrupted by Developer's Work.

##### **2.4 Maintaining Utilities.**

The Developer shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.

## **2.5 Confidentiality.**

Developer shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Developer encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

## **2.6 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 school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

## **2.7 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 Site are taking State or Federally-required tests.

## **3. Substitution for Specified Items**

**3.1.** Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Developer may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

**3.1.1.** If the material, process, or article offered by Developer is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Developer shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

**3.1.2.** This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Developer shall not be entitled to request a substitution with respect to those materials, products or services.

**3.2.** A request for a substitution shall be submitted as follows:

**3.2.1.** Developer shall notify the District in writing of any request for a substitution at least ten (10) days prior to proposal opening as indicated in the Request for Qualifications and Proposals.

**3.2.2.** Requests for Substitutions after award of the Contract shall be submitted within thirty-five (35) days of the date of the Notice to Proceed with Construction.

- 3.5.** In the event Developer furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Developer.
- 3.6.** In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- 3.7.** Developer shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods. District may deduct those costs from any amounts owing to the Developer for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Developer for all the professional services and/or DSA fees or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods arising herein.

#### **4. Termination**

##### **4.1. Emergency Termination Pursuant to Public Contracts Act of 1949**

**4.1.1.** This Facilities Lease is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**4.1.1.1.** Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

**4.1.1.2.** Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**4.1.2.** Compensation to the Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit



**Attachment A: Recommended Conditions of Approval (CAs)**

This document provides a series of recommended Conditions of Approval (CAs) intended to ensure that construction and operations activities associated with the Piedmont Avenue Finishing Kitchen and Cafeteria Project do not cause significant environmental impacts. These recommendations draw heavily from the City of Oakland's Uniformly Applied Development Standards, adopted as Standard Conditions of Approval (Standard Conditions of Approval, or SCAs), which were originally adopted by the City in 2008 and have been incrementally updated over time, most recently in 2015. The Oakland's SCAs incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, Green Building Ordinance, historic/Landmark status, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects.

The Project will also conform to the standards required by the California Division of the State Architect, a state agency which provides design and construction oversight for K-12 schools, community colleges, and various other state-owned and leased facilities. The Division also develops accessibility, structural safety, and historical building codes and standards utilized in various public and private buildings throughout the state of California. In addition, Title 5, Division 1, Chapter 13, Subchapter 13 of the California Code of Regulations provides various applicable standards regarding school construction.

Applicable CAs could be adopted as requirements of an individual Project when it is approved by the Division of the State Architect, and are designed to, and will, avoid or substantially reduce a Project's environmental effects.

The Project sponsor (OUSD, "District") would be responsible for compliance with any recommendations in approved technical reports and with all CAs set forth herein at its sole cost and expense, unless otherwise expressly provided in a specific SCA, and subject to the review and approval of OUSD.

	When Required
<b>Aesthetics, Shadow and Wind</b>	
<b>CA-1: Landscape Plan</b> a. <i>Landscape Plan Required</i> The District shall submit a final Landscape Plan for review and approval by the State Architect. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit.	Prior to approval of construction-related permit
<b>CA-2: Lighting</b> Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.	Prior to building permit final
<b>Air Quality</b>	
<b>CA-3: Construction-Related Air Pollution (Dust and Equipment Emissions)</b>	During construction

	When Required
<p>Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the District shall consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant must be followed unless avoidance is determined unnecessary or infeasible by the District. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, Project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the Project site while measures for the cultural resources are implemented.</p> <p>In the event of data recovery of archaeological resources, the District shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the Project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The District shall implement the ARDTP at its expense.</p> <p>In the event of excavation of paleontological resources, the District shall have an excavation plan prepared by a qualified paleontologist. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the District's expense.</p>	

	<b>When Required</b>
applicable regulatory agency(ies) and implementation of the actions described in this Condition of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under regulatory agency oversight, as appropriate.	
<b>Hydrology and Water Quality</b>	
<b>CA-11: Erosion and Sedimentation Control Plan for Construction</b> <i>a. Erosion and Sedimentation Control Plan Required</i> The District shall have prepared an Erosion and Sedimentation Control Plan that includes all necessary measures to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading and/or construction operations. The Plan shall include appropriate measures, such as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the District may be necessary. The District shall obtain permission or easements necessary for off-site work. The Plan shall specify that, after construction is complete, the District shall ensure that the storm drain system shall be inspected and that debris and sediment is cleared.	Prior to Approval of Construction-Related Permit
<i>b. Erosion and Sedimentation Control During Construction Requirement:</i> No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the DSA.	During Construction
<b>CA-12: Drainage Plan for Post-Construction Stormwater Runoff on Hillside Properties</b> Requirement: The District shall prepare and implement a Drainage Plan that includes measures to reduce the volume and velocity of post-construction stormwater runoff to the maximum extent practicable. Stormwater runoff shall not be augmented to adjacent properties, creeks, or storm drains. The Drainage Plan shall be included with the project drawings submitted to the DSA for site improvements.	Prior to construction

	When Required
<ul style="list-style-type: none"> <li>a. Direct roof runoff into cisterns or rain barrels for reuse;</li> <li>b. Direct roof runoff onto vegetated areas;</li> <li>c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas;</li> <li>d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas;</li> <li>e. Construct sidewalks, walkways, and/or patios with permeable surfaces; or</li> <li>f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.</li> </ul> <p>The project drawings submitted for construction approval shall include the proposed site design measure(s) and the approved measure(s) shall be installed during construction.</p>	
<b>Note</b>	
<p><b>CA-16: Construction Days/Hours</b></p> <p>The District shall comply with the following restrictions concerning construction days and hours:</p> <ul style="list-style-type: none"> <li>a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.</li> <li>b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.</li> <li>c. No construction is allowed on Sunday or federal holidays.</li> </ul> <p>Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.</p>	<p>During Construction</p>
<p><b>CA-17: Construction Noise</b></p> <p>The District's construction contractor shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>a. Equipment and trucks used for Project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.</li> <li>b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for Project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of</li> </ul>	<p>During Construction</p>

	When Required
<p><b>Management Plan:</b></p> <p>Temporary noise barriers will be placed between the proposed construction activities and nearby receptors. The noise barriers may be constructed from plywood and installed on top of a portable concrete X-Rail system to be able to move and/or adjust the wall location during construction activities. A sound blanket system hung on scaffolding, or other noise reduction materials that result in an equivalent or greater noise reduction than plywood, may also be used. Due to the proximity of the commercial and apartment buildings located at the northern and southern borders of Project site, respectively, the use of Sound Transmission Class (STC) rated materials, or other materials that could similarly provide high levels of noise reduction above what plywood or sound blankets alone could provide, should be incorporated into the design of the noise barriers installed at these borders. An STC rating roughly equals the decibel reduction in noise volume that a wall, window, or door can provide. Therefore, using STC-rated materials could substantially increase the level of noise reduction provided by the barrier. The composition, location, height, and width of the barriers during different phases of construction will be determined by a qualified acoustical consultant and incorporated into the Construction Noise Management Plan for the Project.</p> <p>Best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) will be used for Project equipment and trucks during construction wherever feasible. For example, exhaust mufflers on pneumatic tools can lower noise levels by up to about 10 dBA and external jackets can lower noise levels by up to about 5 dBA.</p> <p>Noise control blankets will be utilized on the building structure as the building is erected to reduce noise emission from the site. The use of noise control blankets will particularly be targeted to cover the levels of the building that have line of sight with the windows of adjacent receptors;</p> <p>Construction equipment will be positioned as far away from noise-sensitive receptors as possible. The Project site is surrounded by hard surfaces, and therefore, for every doubling of the distance between a given receptor and construction equipment, noise will be reduced by approximately 6 dBA.</p> <p><b>b. Public Notification Required</b></p> <p>The District's construction contractor shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.</p>	

**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.**

[To be attached at time of GMP.]

**EXHIBIT H**

**PROJECT LABOR AGREEMENT**

**Attached is the Project Labor Agreement applicable to this Project, which Developer and its subcontractors agree to be bound.**

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WHEREAS, the interests of the general public, District, the Union(s) and Contractor/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor/Employer(s) and the Union(s) desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractor/Employer(s), and further, to encourage close cooperation among the Contractor/Employer(s) and the Union(s) so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if union and non-union workers of different employers were to work side by side on the Project thereby leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractor/Employer(s) and the affected Union(s), except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the California Public Contract Code and the District's Local Business Utilization policy; and

WHEREAS, the District desires to provide construction training and employment opportunities for OUSD graduates and residents of Oakland through apprentice and pre-apprentice programs; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS

- 1.1 "District" means the Oakland Unified School District.
- 1.2 "Agreement" means this Project Labor Agreement and all Addenda attached hereto.
- 1.3 "Agreement To Be Bound" means the document, as set forth in Addendum A hereto, that formally binds the Contractor/Employer(s) to comply with all the terms and conditions of this Agreement and that operates as a pre-condition to performing work on the Project.

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organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

1.13 "Oakland Resident" means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resided within the boundaries of the Oakland Unified School District on the date of such certification and the effective date of this Agreement.

1.14 "District Graduate" is a person who attended school in Oakland, has a high school diploma or equivalent credential, and currently resides within the boundaries of the Oakland Unified School District.

## ARTICLE 2

### SCOPE OF AGREEMENT

2.1 **Scope:** The District will apply this Agreement as a contract specification to the award of all construction contracts as specifically defined herein under this Article 2 of this Agreement.

2.2 **Parties:** The Agreement shall apply and is limited to all Contractor/Employer(s) performing or subcontracting work on the Project (including subcontractors at any tier), the District, the Council and the Union(s) signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

2.3 **Project Description:** All District public work construction projects ("Project(s)") contracted by the District funds. The District may exclude, at its discretion, up to 5% of all capital funds available to the District for its Projects during the term of this Agreement. It is expected that the application of this 5% exclusion will not disproportionately affect any one craft. This exclusion will be reviewed by the Parties on an annual basis as requested by either Party or during an agenzized JAC meeting.

2.4 **Covered Work:** This Agreement covers, all site preparation, surveying, construction, alteration, demolition, installation, painting, improvement or repair of buildings, structures and other works, and related activities for the Project, including geotechnical and exploratory drilling conducted after bid, temporary HVAC, landscaping and temporary fencing, installation of modular office systems when associated with a covered project, and that is within the craft jurisdiction of one of the Union(s) and which is directly or indirectly part of the Project, including, without limitation to the following examples, pipelines (including those in linear corridors built to serve the project), pumps, pump stations and start-up., .On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all on-site soils and

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- 2.6 After installation by the Contractor(s) and upon the issuance of a notice of final completion or formal acceptance of a portion of the project or a building system by the District, it is understood, the District reserves the right to perform start-up, operation, repair, maintenance or revision of equipment or systems with employees of the District. If required, the service representative may make a final check and may direct on site craftworkers, covered by this agreement, to make any necessary repairs to protect the terms of a manufacturer's guarantee or warranty prior to start-up of a piece of equipment.
- 2.7 It is expressly agreed and understood by the parties hereto that the District shall have the right to purchase material and equipment from any source, except where limited by this Agreement, and the craftspersons will handle and install such material and equipment.
- 2.8 Exclusions. The following shall be excluded from the scope of this Agreement:
- 2.8.1 The Agreement is not intended to, and shall not affect or govern the award of public works contracts by the District which are not included in the Project.
- 2.8.2 The Agreement shall not apply to a Contractor/Employer(s)' non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing MLAs), staff engineers or other professional engineers, administrative and management. This Agreement shall not apply to Professional Services so long as the work performed is not subject to Prevailing Wage classifications.
- 2.8.3 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city or other governmental bodies or their contractors; or by public or private utilities or their contractors.
- 2.8.4 Off-site maintenance of leased equipment and on-site supervision of such work;
- 2.8.5 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code and Education Code.
- 2.9 Award of Contracts: It is understood and agreed that the District shall have the absolute right to select any qualified bidder for the award of contracts under this Agreement, and in accord with the District's Local Business Policy. The bidder need only be willing, ready and able to execute and comply with this Agreement.

- (b) If a craft union (hereafter "Aggrieved Union") believes that an assignment of work on this Project has been made improperly by a contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its MLA, as permitted by subsection (a) of this Section 3.6, the Aggrieved Union may submit a claim under the jurisdictional resolution process contained in Article 6 of this PLA, and the decision rendered as part of that process shall be enforceable to require the contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft union under the subcontracting clause of its MLA, as permitted pursuant to Section 3.6 (a) of this Article, shall be valid and fully enforceable by that craft union unless it conflicts with a jurisdictional award made pursuant to this Agreement. If the award made under the MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void ab initio.

#### **ARTICLE 4**

##### **RELATIONSHIP BETWEEN PARTIES**

- 4.1 This Agreement shall only be binding on the signatory parties hereto, their successors and assigns, and shall not apply to parents, affiliates, subsidiaries, or other ventures of any such party.
- 4.2 Each Contractor/Employer(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor/Employer(s) or any dispute between the Union(s) and the Contractor/Employer(s) respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor/Employer(s), party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability of a Union(s) shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the Contractor/Employer(s) and the other Union(s) party to this Agreement.
- 4.4 It is recognized by the parties to this Agreement that the Contractor/Employer(s) are acting only on behalf of said Contractor/Employer(s), and said Contractor/Employer(s) have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind the District.

#### **ARTICLE 5**

##### **NO STRIKES - NO LOCKOUTS**

- 5.1 The Union(s), District and Contractor/Employer(s) covered by the Agreement agree that for the duration of the Project:
- 5.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or

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trust or benefit contribution payments, that nothing in this Agreement shall affect remedies available under the MLAs. If the General Contractor/Employer(s) is delinquent in the payment of Trust Fund(s) contributions for covered work performed on this project, the General Contractor/Employer(s) agrees that the affected Trust Fund(s) may place the District on notice of such delinquencies and the General Contractor/Employer(s) further agrees that the District may withhold payment, in whole or in part, until the delinquency is satisfied. If the delinquency remains unsatisfied for more than 30-days, District shall be authorized to issue joint checks to the General Contractor/Employer(s) and the Trust Fund(s), on behalf of the affected employee(s). This withhold and/or joint check issuance shall be the only remedy available to either the Union(s) or Trust Fund(s) under this Agreement. The aggrieved Union(s) or Trust Fund(s) herein agree not file a stop payment notice pursuant to Civil Code section 8100 et seq., unless the District fails to withhold payment or issue joint checks as specified herein, provided, however, that the District shall have 30 additional days from the delinquency withhold to process the joint check warrants.

5.1.5 If the District contends that any Union has violated this Article, it will notify in writing (including email) the Secretary-Treasurer/Business Manager/Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use his/her best efforts to cause the cessation of any violation of this Article, including the release of any improperly filed stop payment notice. The leadership of the Union will immediately notify the membership of its obligations under this Article.

5.2 **Expedited Arbitration:** Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

5.2.1 A party invoking this procedure shall notify Bob Hirsch, as the permanent Arbitrator, or, Barry Winograd, as the alternate Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of Arbitrators in Article 11.2.2, Step 5. Notice to the Arbitrator shall be by the most expeditious means available, with notices by facsimile, email or telephone to the District and the party alleged to be in violation, and to the Council and involved local Union(s) if a Union(s) is alleged to be in violation.

5.2.2 Upon receipt of said notice, the District will contact the designated Arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

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will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

- 6.2 All jurisdictional disputes on this Project between or among the Union(s) and the Contractor/Employer(s), parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractor/Employer(s) and Union(s) parties to this Agreement.
- 6.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.
- 6.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor/Employer(s)' assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.
- 6.4 Each Contractor/Employer(s) shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the District will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractor/Employer(s) may be held together.

## **ARTICLE 7**

### **PRE-JOB CONFERENCES**

- 7.1 Prior to the commencement of any Project Work, the Prime Employer shall notify the Council of the need to convene a preconstruction conference. Such conference shall be held in a timely manner a minimum of seven (7) days prior to the commencement of each and every construction phase or construction contract for the Project. The preconstruction conference shall be conducted by the Council and held at a location selected by the Council. Such preconstruction conference shall be attended by a representative each from the participating Contractor(s) and Union(s) and the Prime Employer.
- 7.2 All Contractor(s) at all tiers that are required to participate in the preconstruction conference shall be prepared to make Craft assignments of work and to discuss in detail all issues that may impact or are relevant to the particular construction work being performed and shall include, but not be limited to, the information as set forth below.

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grievance that has been filed consistent with Article 11. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Subcommittee for resolution. The Joint Administrative Subcommittee shall meet as required to resolve grievances by majority vote with such resolutions to be final and binding on all signatories of the Agreement. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Joint Administrative Subcommittee, if such award is made by a majority vote, and the hearing shall proceed ex parte. If the subcommittee is unable to resolve the grievance, the grievance may be referred in accordance with Step 4 of Article 11.

## **ARTICLE 11**

### **GRIEVANCE PROCEDURE**

- 11.1 All disputes concerning the Interpretation and/or application of this Agreement which do not fall within the Article 5, No Strikes - No Lockouts procedure or Article 6, Work Assignments and Jurisdictional Disputes shall be governed by the following grievance and arbitration procedure.

**Employee Grievances:** All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the MLA for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

- 11.2 Grievances between the parties regarding Interpretation and/or application of this Agreement shall be pursued according to the following provisions:

11.2.1 A grievance shall be considered null and void if not brought to the attention of the party against whom the grievance is filed within ten (10) working days after the grievance is alleged to have occurred but in no event more than thirty (30) days after the charging party became aware of the event giving rise to the dispute.

11.2.2 Grievances between the parties regarding provisions of this Agreement shall be settled or otherwise resolved according to the following Steps and provisions:

**Step 1:** A representative of the grievant and the party against whom the grievance is filed shall meet and attempt to resolve the grievance.

**Step 2:** In the event the matter remains unresolved in Step 1 above, within five (5) working days, the grievance shall be reduced to writing and may then be referred by the grieving party to the other party for discussion and resolution.

**Step 3:** In the event that the representatives are unable to resolve the dispute within the five (5) working days after its referral to Step 2, either involved party may submit the dispute within five (5) working days to the Joint Administrative Subcommittee established in Section 10.2. The Joint Administrative Subcommittee shall meet within five (5)

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- 11.3 Grievances between a Union(s) and a Union(s)' signatory Contractor/Employer(s) involving interpretation or application of the MLA shall be governed by the grievance procedures contained in the MLA.

## **ARTICLE 12**

### **UNION RECOGNITION AND REPRESENTATION**

- 12.1 The Contractor/Employer(s) recognize the Union(s) signatory hereto as the sole and exclusive collective bargaining representatives for all craft employees on the Project.
- 12.2 The Contractor/Employer(s) shall require all employees who work on a Construction Contract on or before eight days of consecutive or cumulative employment on the Project to comply with the applicable Union(s)' security provisions, and to maintain compliance for the period of time they are performing work on the Project, which requirement shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by law. Further, there is nothing in this Agreement that would prevent non-union employees from joining the Union(s).
- 12.3 Authorized representatives of the Union(s) shall have access to the site at all times. Such representatives shall comply with reasonable visitor safety and security rules established for the Project.

## **ARTICLE 13**

### **REFERRAL PROCESS**

13. The Union(s) shall be the primary source of all craft labor employed on the Project. However, in the event that an Oakland Certified Local Business Contractor has its own core workforce, or a non-Local Contractor/Employer has Oakland Residents on its own core workforce, (collectively "Core Employees") the following provisions shall apply, consistent with the MLA hiring hall provisions:

A. Contractor/Employers with Oakland Resident employees may request by name, and the Union(s) shall honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

- 13.1.1 possess any license and/or certifications required by state or federal law for the Project work to be performed;
- 13.1.2 have worked a total of at least one thousand five hundred (1500) hours in the construction craft during the prior three (3) years;
- 13.1.4 were on the Contractors' active payroll for at least sixty (60) out of one hundred forty (140) days the Contractor was actively performing work prior to the contract award;

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- 13.4 All Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the Signatory Union(s) so long as such procedures are in compliance with applicable federal, state or local law. The Contractor shall have the right to determine the competency of all employees and may reject any referral for any reason, provided that the Contractor complies with Article 22, Non-Discrimination, and in accordance with the applicable MLA.
- 13.5 In accordance with the Master Labor Agreement and in the event that referral facilities maintained by the Union(s) are unable, despite good faith efforts, to fill the request of a Contractor for employees within a forty-eight (48) hour period after such request is made by the Contractor, Saturdays, Sundays and Holidays excluded, the Contractor shall be free to obtain work persons from any source ("Alternative Employees"). Upon hiring Alternative Employees, the Contractor shall immediately notify the appropriate Union(s) of the name and address of the Alternative Employees hired, which Alternative Employees shall be bound by the provisions of this Article and the Union(s)' hiring hall rules.
- 13.6 The Union(s) will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractors. The parties to this Agreement support the development of increased numbers of skilled construction workers from the Residents of Oakland / District to meet the needs of the Project and the requirements of the industry generally. Accordingly, contingent upon request by the Contractor, the Unions agree to encourage the referral and utilization of Residents as journeyman and apprentices on the Project and the entrance of Residents into apprenticeships and training programs, as long as such Residents possess the requisite skills and qualifications.

#### **ARTICLE 14**

##### **LOCAL HIRING**

- 14.1 The Parties agree to achieve the inclusion of OUSD graduates and Oakland Residents in the employment and apprenticeship opportunities created by the Covered Work, which will be known as the Local Hiring Program (LHP). With day-to-day support from the District, the Joint Administrative Committee (JAC) formed pursuant to the provisions of Article 8 shall monitor the progress of the LHP and will serve as the central forum for representatives of all affected parties to exchange information and ideas and to advise the District staff and consultants concerning the implementation and enforcement of the LHP.
- 14.2 The parties agree to a goal that for each construction contract, Residents of the District will perform up to 50 percent (50%) of all hours worked on all covered projects, on a craft-by-craft basis, if such workers are available, capable and willing to work on the projects, together with the apprentice goals established in Article 15, below.
- 14.3 The Contractors shall make good faith efforts to reach these goals, as described in Article 14.4 below and to reach these goals in accordance with the hiring hall procedures listed in the MLAs and the procedures identified in Article 15.4. The

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14.4.10 In the event that Local Unions are unable to fill any request for local employees within forty-eight (48) hours after such request is made by the Contractor (Saturdays, Sundays, and holidays excepted), the Contractor may employ local residents from any other available source, including District apprentice program graduates and community-based pre-apprentice organizations located within the District. However they must be dispatched through the union halls through the dispatch procedures outlined in the MLAs.

14.5 To the extent possible, the parties agree to implement the Local Hiring Program while complying with the District's Local Business programs for the covered project. To the extent that the District determines, in its sole discretion, that there is a conflict between the Local Hiring Program established in this Agreement and the District's Local Business Program, the conflict shall be resolved in favor of the Local Hiring Program on the construction work covered by this Agreement.

14.6 For the purposes of reaching the goal established in this Article, a Contractor may qualify for full credit toward the goal by employing OUSD Graduates and Oakland Residents for other work the Contractor is performing in any of the nine Bay Area counties of: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa and Sonoma. Credit will only be given for work performed during the life of the Covered Project. In order to receive such credit, the Contractor must submit certified payrolls as documentation to the Coordinator. No credit for off-site work will be allowed until the Contractor has received approval from the District.

## **ARTICLE 15**

### **APPRENTICES**

15.1. The District and Unions recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry. The District and the Unions agree to provide financial and other assistance to enhance and sustain such programs through appropriate sources. The Contractor(s) will employ apprentices in the respective crafts, which are performing work on the Covered Project, and within the jurisdiction of the craft in which those apprentices are working.

15.2. Subject to any restrictions contained in law, the Parties agree to a goal that apprentices will perform up to twenty percent (20%) of the total craft work hours. The Unions agrees to cooperate with the Contractor in furnishing apprentices as requested and in accordance to the dispatch procedures of the MLAs.

15.3. The parties agree to a goal that only Oakland residents, especially District graduates shall be utilized as apprentices. The Contractor shall make good faith efforts to reach this goal through the utilization of MLA hiring and apprentice procedures and, when apprentices are not available; Contractors shall work with community-based organizations such as, but not limited to, the Cypress Mandela Training Center and the West Oakland Jobs Resource Center to identify potential apprentices.

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requests shall be provided to the Coordinator within ten (10) days of request by the Coordinator.

- 15.5. The parties to this agreement shall exercise, to the extent of their authority, their best efforts to recruit District graduates as apprenticeship program applicants. In coordination with the District, the Unions will conduct outreach activities to recruit and refer qualified District graduates to apprenticeship programs. In addition, The Unions agree, for the life of this Agreement, to the annual enrollment of no less than twenty-five (25) District graduates, at least ten (10) of whom will enter the List Trades. The responsibility of the District, working with the Unions and applicable community based organizations, is to maintain, provide and track a list of such graduates. These District graduates will become part of a pool of Qualifying Apprentices for the Contractor/Employers to draw from for hiring on Covered Project. The requirements of this Section are in addition to any other goals and requirements discussed in this Article.
- 15.6. For purposes of monitoring and compliance with respect to the enrolment requirements of Section 15.5, the District and the Unions agree to the following process:
  - a. The District shall maintain and make available to the Unions a database of OUSD students enrolled in District sponsored construction related academies and District graduates of those academies. The District graduates must have graduated from MC3 approved pre-apprenticeship programs. Those would include, but may not be limited to, Cypress Mandela and Rising Sun,. These District students/graduates shall be referred to as "Qualifying Apprentices" for the purposes of assuring there is an adequate pool of Qualifying Apprentices for the Contractor/Employers to draw from on each Covered Project.
  - b. On an annual basis, in January, the Council shall submit a Plan for Implementation (Plan) for approval by the JAC. The Plan will include projections/schedules for new apprentice intakes. It may also include the Union's commitment to job fairs, financial or human support in tutoring of District residents for math exam preparation, opportunities for District residents to enroll in union pre-apprenticeship programs, support of and participation in District high school construction academies, etc.
  - c. The Council will submit a bi-annual report to JAC on the status of recruitment, placement and retention of District apprentices, including details of outreach in the District. The reports should be made in person and with a representative of the applicable JATC present for participation in questions and discussion.
  - d. If the Council is found to be in apparent non-compliance with Article 15.5, the District may request that the Council to present to the JAC as to why the goals are not being met..

The District will actively seek to develop at least one such program that focuses on gender equity in the building trades. The District anticipates that there may be more than one program or pathway that will meet the needs of Oakland students. Annually, for the 2017-18, 2018-19 and 2019-20, the Superintendent shall allocate \$60,000 from Measure J for the Summer Pre-apprenticeship Internship program.

16.2.2 The District shall, with the support of the Alameda County Building Trades Council, co-sponsor two Building & Construction Trades Career Fairs during each school year that provide exposure to Oakland students and families. The purpose of the career fair is to inform students and their families about career opportunities in the building trades and to inform student pathway selection and summer pre-apprenticeship programs in the building trades. The first career fair shall occur in the Fall of 2016 with the intent of exposing middle school and high school students to the trades.

16.2.3 Establish a Workforce Development Fund. The District will require that all contractors working under the Project Labor Agreement ("PLA") contribute \$.20 per work-hour performed under the PLA to a Workforce and Apprenticeship Development Fund administered by the District with the advice of the Joint Administration Committee of the PLA. The District shall establish an account for receipt and distribution of the funds. The Fund shall be audited annually as a part of the annual bond audit. 20% of the Fund may be used by the District for the costs of implementation and management of the Construction and Building Trades Pre-Apprenticeship Programs. No less than 80% of the Fund shall be used to fund direct work based learning programs and apprenticeships for Oakland students.

16.2.4. In collaboration with the Council, establish an Industry Partnership Council specifically focused on the Building and Construction Trades to support the successful implementation of this program including but not limited to:

- Establishing clear commitments for developing student pre-apprenticeships.
- Setting clear targets and goals for work based learning experiences, apprenticeships, and student outcomes.
- Identification of key industry standards necessary to achieve mastery in key industry standards
- Providing feedback on developed curriculum
- Providing feedback on the developed curriculum to support implementation including practical cases relevant for occupational expertise.
- Reflect yearly on the overall goals and targets that we set the previous year and track long term trends for student entry into the workforce.

## ARTICLE 17

### WAGE SCALES AND FRINGE BENEFITS

17.1 All Contractor/Employer(s) agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, health benefit funds, and all other contributions established by the applicable MLA for each hour worked on the Project in the amounts designated in the MLAs of the appropriate Union(s) and paid in accordance with the MLA. The Contractor/Employer(s) shall not be required to pay contributions to any other trust funds or other contributions that are not contained in the published prevailing wage determination to satisfy their obligation under this Article, except that those Contractor/Employer(s) who are

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## **ARTICLE 20**

### **MISCELLANEOUS PROVISIONS**

- 20.1 Counterparts. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Signature pages transmitted separately to other parties to this Agreement shall be deemed equivalent to original signatures.
- 20.2 Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.
- 20.3 Non-Discrimination. The Contractor/Employer(s) and Union(s) agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment on the Project.

## **ARTICLE 21**

### **GENERAL SAVINGS CLAUSE**

- 21.1 It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such Article or provision during the period of invalidity. Such suspension shall not affect the operation of any other provision covered in this Agreement to which the law or regulation is not applicable. Further, the District and Council agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

## **ARTICLE 22**

### **DURATION OF AGREEMENT**

This Agreement shall become effective on the day the District ratifies this Agreement and shall continue in full force and effect for a period of five years. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

**ACCEPTED AND AGREED** on the date indicated below:

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**Electrical Workers, Local 595** By: \_\_\_\_\_

**Elevator Constructors, Local 8** By: \_\_\_\_\_

**Iron Workers, Local 378** By: \_\_\_\_\_

**Laborers, Local 67** By: \_\_\_\_\_

**Laborers, Local 304** By: \_\_\_\_\_

**Operating Engineers, Local 3** By: \_\_\_\_\_

**Plasterers, Local 66** By: \_\_\_\_\_

**Roofers, Local 81** By: \_\_\_\_\_

**Sheet Metal Workers, Local 104** By: \_\_\_\_\_

**Sign Display, Local 510** By: \_\_\_\_\_

**Sprinkler Fitters, Local 483** By: \_\_\_\_\_

**Teamsters, Local 853** By: \_\_\_\_\_

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**ADDENDUM A  
AGREEMENT TO BE BOUND**

The undersigned party confirms that it agrees and assents to comply with and to be bound by the Project, [NAME OF PROJECT LABOR AGREEMENT] as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement To Be Bound, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements, as set forth in Article 17.1, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such Trust Fund(s) and ratifies and accepts the trustees appointed by the parties to such Trust Fund(s). The undersigned party agrees to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

Such assent and obligation to comply with and to be bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party for the [NAME OF PROJECT]. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement To Be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

Dated: \_\_\_\_\_ Project: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Authorized Officer & Title

\_\_\_\_\_  
Name of Contractor/Employer(s)

\_\_\_\_\_  
Contractor/Employer(s) Address

\_\_\_\_\_  
CSLB #

\_\_\_\_\_  
Area Code Phone

**EXHIBIT I**

**LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE  
PROGRAM**

**Attached is the District's Board Policy and Administrative Regulations on its Local, Small Local and Small Local Resident Business Enterprise Program applicable to this Project, which Developer agrees to be bound.**

[Starts on Next Page]

### Emergency Contracts

L/SL/SLRBE businesses will be given first priority in the performance of emergency work as defined in Public Contract Code section(s) 22000-22045 which formulates and establishes procedures for bidding, contracting, and purchasing goods and services under the California Uniform Construction Cost Accounting Act.

### Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request and permit the District to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., prior to commencement of work.

### Prevailing Wages

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage.

### Local Subcontracting Outreach

To ensure full disclosure of contracting and subcontracting opportunities available through the Oakland Unified School District, each of the District's awarding departments must post contracting opportunities on the District's website.

The District is in collaboration with the City of Oakland, Office of Contract Compliance & Employment Services, which maintains a list of certified for profit and not-for profit businesses and organizations. The list is divided by trade or profession and includes contact information as and if the certification type is either Local Business Enterprise (LBE) or a Small Local Business Enterprise (SLBE). In addition, the District, through its Local Compliance Officer, maintains a list of Small Local Business Enterprises (SLBE's) which are also owned by residents of City of Oakland (SLRBE). Each agency conducting a construction related solicitation is required to obtain responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms.

See Administrative Regulation 7115

1/29/14



### Verified Results of the 2008 L/SL/SLRBE Program

Since 2008, the quantifiable impacts of the Program include:

- Increases in the number of Oakland certified businesses participating in District construction contracting projects and construction related professional services agreements;
- Increases in the circulation of local dollars within the Oakland community and revitalization of Oakland's economic base through reinvestment of General Obligation bond dollars; and
- Increases in the development and capacity enhancement of Oakland certified businesses.

The Amended 2014 L/SL/SLRBE continues to provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for construction related goods and services.

### Part I.

#### Definitions

- 1) **Availability** - The number of certified L/SL/SLRBE firms, by trade, ready and willing to compete for work within the District's geographical boundaries (interchangeable with that of the City of Oakland).
- 2) **Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the District as required by the solicitation or request for quotes, bids or proposals.
- 3) **Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the District.
- 4) **Dealer** - A firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.
- 5) **District** - Refers to the District's geographical boundaries which are interchangeable with that of the City of Oakland. Depending upon context, reference to District may also include the Oakland Unified School District, its Board of Education, Superintendent and other authorized representatives.
- 6) **Emergency Work** - A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to the health, safety and welfare of Oakland residents and meeting the District's legal requirements for waiving normal bidding procedures.

- 16) **Small Local Resident Business Enterprise (SLRBE)** –A business that (a) meets the Size Standard set by the City of Oakland for small businesses; (b) is an independent business headquartered in the District’s geographical area; (c) is wholly owned and operated by persons whose principal place of residence is located within the boundaries of District’s geographical area; (d) is a full operation conducting business for at least 12 consecutive months, and; (e) holds a valid business tax certificate.
- 17) **Subcontractor/Sub-consultant** - The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another’s contract.
- 18) **Subsidiary/Affiliate** - Part of a larger company with national offices located in other cities outside Oakland, and controlled by a home office or headquarters outside Oakland.
- 19) **Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify. Businesses with offices both within and outside of the District that seek certification as a local business must demonstrate the existence of a bona fide local office in accordance with the following criteria:
  - a) **Independent Office Site:** The local office can and does function as an independent office site. The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SL/SLRBE certification;
  - b) **Fixtures and Equipment:** The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s) software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
  - c) **Space:** The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
  - d) **Dedicated Personnel:** The local office must be the main office for assigned personnel who conduct a full range of the business’ activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
  - e) **Daily Function:** The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought.
- 20) **Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.
- 21) **Waiver** - An intentional action by the Board of Education, excusing a contractor or a department from adhering to and/or complying with a District policy.

**Program Requirements**

There is a 50% minimum participation requirement for all construction contracts over \$45,000 and all construction related professional services contracts over \$84,100. (Subject to annual increases pursuant to Public Contract Code section 20111(a).) All construction contracts below \$45,000 and all

**Tier 1: Mandatory**

50% Mandatory Requirement can be met with: 25% (or less) Local Business participation and 25% (or more) Small Local or Small Local Resident Business participation.

	LBE <i>Maximum</i> Participation	SLBE <i>Minimum</i> Participation
	25%	25%*
<b>Total</b>	<b>0% to 25%</b>	<b>25% to 50%</b>

**Tier 2: Optional**

Participation over and above the 50% requirement earns additional bid discounts and points up to a maximum of a 5% bid discount and 5 preference points as long as the participation increases between SLBE's *and/or* SLRBE's or additional participation is achieved entirely with SLRBE's.

LBE <i>Maximum</i> Participation	SLBE/SLRBE <i>Minimum</i> Participation	Total LBE/SL-SLRBE Participation	Bid Discount / Preference
25%	35%	60%	3%

LBE <i>Maximum</i> Participation	SLBE/SLRBE <i>Minimum</i> Participation	Total LBE/SL-SLBE Participation	Bid Discount / Preference
25%	45%	70%	4%

LBE <i>Maximum</i> Participation	SLBE <i>Minimum</i> Participation	SLRBE <i>Minimum</i> Participation	Total LBE/SL-SLBE Participation	Bid Discount / Preference
25%	35%	20%	80%	5%

### Emergency Contracts

L/SL/SLRBE businesses will be given first priority in the performance of emergency work as defined in Public Contract Code section(s) 22000-22045 which formulates and establishes procedures for bidding, contracting, and purchasing goods and services under the California Uniform Construction Cost Accounting Act.

### Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request (within ten calendar days) and permit the District to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., prior to commencement of work. A penalty of one percent (1%) of the contract amount or one thousand dollars (\$1,000) per day (whichever is less) may be applied if records or documents are not provided within the specified time. The District shall deem such refusal a material breach of contract, in which case the District may terminate the contract and/or stop the work until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future District contracts for a period of six months to five years, and may lose certification.

The subcontractor's progress payment report must be submitted with each progress payment in order for the progress payment to be processed. Also, prime contractors and/or prime consultants will provide the District with executed copies of its subcontractor/sub consultant agreements to verify dollar amounts stated for all L/ SL/SLRBEs. Contractors must also provide information with each progress payment indicating payments made to L/SL/SLRBEs in order to receive subsequent progress payments.

### Prevailing Wages

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn. The prevailing wage also is based on the locality and nearest labor market. The California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages and may be reached at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD).

The Prime contractor shall include in its contracts with its sub contractors, requirements that its sub contractors' employees and their subcontractors' employees shall be compensated in an amount no less than the general prevailing wage rate of per diem wages pursuant to the California Labor Code Sections 1770, et seq.

The prevailing wage requirement will be monitored and enforced by the District in accordance with state law. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and

Joint Venture License Requirements: Each joint venture partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each of the joint venture partners must hold a Joint Venture License (or demonstrate that a Joint Venture License application is pending with the Contractors State License Board) and possess the requisite specialty license for that trade bid.

Delineation of Joint Venture Work:

The SLBE/SLRBE partner must clearly define the portion of the work it will perform during the project. This work must be of the similar type of work the SL/SLRBE partner performs in the normal course of its own business. The Joint Venture Agreement must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

Responsibilities of the SLBE/SLRBE Joint Venture Partners:

1. The SLBE/SLRBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project;
2. The SLBE/SLRBE partner must perform work that is commensurate with its experience.
3. The SLBE/SLRBE partner must use its own employees and equipment to perform its portion of the project.

Application of Bid Discounts for Joint Venture Agreements

To be eligible for a bid discount, at the time of bid submittal, each joint venture partner must hold a Joint Venture License (in the case of construction contracts only, successfully demonstrate that a Joint Venture License application is pending with the Contractors State License Board) and each must have the license that is appropriate for the project as required in the contract document of the contract award authority.

Other Joint Venture Conditions

The District's Facilities Director or designee must first approve the SLBE/SLRBE Joint Venture Agreement before the joint venture is eligible for bid discounts. Any changes must also receive the prior approval of the District's Facilities Director or designee. In addition to any other information required by conditions specified herein, each SLBE/SLRBE joint venture must provide upon request, cancelled checks and any other financial records to the District.

Additional Considerations

Prime contractors shall not impose any unreasonable additional criteria on subcontractors that are not required by the District. Any demand on an L/SL/SLRBE subcontractor that would change the way the subcontractor does business will be deemed unreasonable. The prime contractor shall not selectively impose criteria upon local certified businesses that are not applied to other business in similar contractual relationships with the prime.

All bids submitted shall be made available to the public upon bid opening as required by the Public Contract Code.

3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.
4. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.
5. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.
6. A LBE/SLBE must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.
7. All taxes, fees, permit fees, and fines shall be current.
8. Upon request by the City's certifying officer, a LBE/SLBE must possess and make available for inspection the following documentation citing the Oakland business street address:
  - a. Executed (i.e. signed by all parties) copies of past/current contracts;
  - b. Oakland Business Tax Certificate and federal tax identification number;
  - c. Executed lease or other written agreement for occupancy of the Oakland office;
  - d. Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)
9. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to:
  - a. Commercial advertising
  - b. On-site signage
  - c. Letterhead
  - d. Previous Lease Agreements
  - e. Marketing materials

- Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.
- SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

#### Size Standards for Small Businesses

The City has established a size limit in order to set forth criteria and define small local businesses. In making the determination relative to size, the City will use thirty percent (30%) of the United States Small Business Administration's Small Business Size standards. Size is based on gross revenues realized by the firm for the three most recent fiscal years that the firm is doing business.

#### LBE/SLBE Certification Process

**Step 1 – The Application:** Download Applications from the web site maintained by Contract Compliance & Employment Services (CC & ES). From Oaklandnet.com, select Contract Compliance on the "go to" link. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, attach the last three most recent business tax returns.

**Step 2 – The Review Process:** The City of Oakland employs a three-tier certification process as standard operating procedure. This process is used to determine the degree of difficulty and time necessary to complete the review.

- ✓ **Tier I** – The application, upon review by staff, is complete and accurate, and requires no further action. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days. Tier I applications are typically LBE re-certifications.
- ✓ **Tier II** – The application, upon review by staff, requires additional information (e.g. application information is incomplete or requires clarification, supporting documents missing, etc.) If the application is incomplete, additional documentation will be requested and must be submitted within 10 working days. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days.
- ✓ **Tier III** – The application, upon review by staff, necessitates a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination,

Appeal

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. The City may extend the time for filing, or waive the time limit in the interest of justice. The City may specify in writing the reason for so doing.

Third parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

END Part II

Part III

**OAKLAND UNIFIED SCHOOL DISTRICT  
Small Local Resident Business Enterprise  
("SLRBE")**

*Supplemental Certification Documentation*

The following will be required to qualify as a SLRBE under OUSD's Local Business Program:

Any three (3) of the following dated within 90 days. Must reflect the business owners' CURRENT residential address:



**EXHIBIT J**

**DISABLED VETERANS BUSINESS ENTERPRISE PARTICIPATION POLICY**

**Attached is the District's Disabled Veterans Business Enterprise Participation Policy, applicable to this Project, which Developer agrees to be bound.**

[Starts on Next Page]

B. OUSD Form 2: Certification

This form is to be completed by subcontractors and submitted to the Prime Contractor and used as backup to the Prime Contractors Method of Compliance form.

1.03 SUBSTITUTION, REMOVAL, OR CONTRACT MODIFICATION OF DVBE

No DVBE subcontractor, supplier, trucker, or other business listed on the District Form 2 (DVBE Subcontractor Participation) is to be substituted, removed from the contract, or have its contract modified in any way without prior District approval per Public Contract Code sections 4107 and 4110.

1.04 PRIME CONTRACTOR CONTRACT REQUIREMENTS

Whenever contract supplements, amendments, or change orders which require District approval are necessary, the contractor shall be required to comply with those participation goals which applied to the original contract with respect to the supplement, amendment, or change order.

Prime Contractors shall include in any subcontract with a DVBE a provision which provides that DVBE Subcontractor a remedy for the Prime Contractor's non-compliance with his or her commitment to utilize DVBE Subcontractors. This contractual provision shall include an agreement by the Prime Contractor to compensate any DVBE Subcontractor if the Prime Contractor does not fulfill its commitment to utilize the DVBE Subcontractor. This contractual Provision shall also state that it is enforceable in a court of competent jurisdiction.

Suggested language for the agreement between the Prime Contractor and the Subcontractor is as follows:

"Prime Contractor shall fulfill its commitment to utilize and compensate DVBE Subcontractor to the full extent agreed to by Prime Contractor. In the event DVBE Subcontractor is not so utilized, Prime Contractor shall nonetheless compensate the Subcontractor if the Prime Contractor does not fulfill its commitment to utilize the DVBE Subcontractor. This provision shall be enforceable in court of competent jurisdiction."

1.05 DVBE QUALIFICATION REQUIREMENTS

Unless otherwise determined, only DVBEs certified with the City of Oakland, the Port of Oakland, CalTrans, or the Regional Transit Agency are eligible for participation in Oakland Unified School District DVBE affirmative action requirements as follows:

- A. If the selected bidder and/or subcontractors are already listed in the above stated agencies' DVBE directories of certified firms, the District's Contract Compliance Consultant will proceed with its evaluation of the bid or proposal for award of contract.
- B. If the selected bidder and/or subcontractors have submitted application for certification with their bid or proposal, the District's Contract Compliance Consultant will review the Application for certification review. The Contract Compliance Consultant will conduct a DVBE certification review of the non-certified bidders and subcontractors and will inform the District of which bidders or subcontractors are eligible. If time for the work is of the essence and approval is delayed for an unreasonable amount of time due to forms not being complete or delays by the District's Contract Compliance Consultant, the selected bid for the specific project may be rendered non-responsive and awarded to another bidder.

1.06 NON COMPLIANCE AND SANCTIONS

- A. Noncompliance with District Policy

In the amount of the penalty assessed, as agreed to by the contractor or subcontractor and the District.

#### 1.07 COMPLAINT PROCEDURES

Any contractor or subcontractor, who has submitted a bid for a particular project and has knowledge of or suspects a violation of District DVBE policy by another contractor or subcontractor warranting that contractor or subcontractor's bid be rendered non-responsive because of the violations, may file a Formal Bid Protest by identifying in writing the violation, particular project and date of bid opening within five (5) calendar days of opening. A written protest should be addressed as follows:

Facilities Planning & Management  
Attention: Deputy Chief  
Director of Facilities  
955 High Street  
Oakland, California 94601

With a copy to:

Davillier-Sloan, Inc. Jake Sloan, Contract Compliance Consultant  
1630 12<sup>th</sup> Street  
Oakland, California 94607

Office of the State Administrator  
Secretary to the Board of Education  
1050 2<sup>nd</sup> Avenue, Workspace B-237  
Oakland, California 94606

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19.															
20.															
B. Subtotal															
C. Other Subcontractor/Supplier															
D. Prime Contractor															
E. Total Bid															

	ALTERNATE #3					ALTERNATE #4					ALTERNATE #5				
	DVBE					DVBE					DVBE				
A. Subcontractor or Supplier	AA	A	H	NA		AA	A	H	NA		AA	A	H	NA	
1.	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
2.															
3.															
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10.															
B. Subtotal															
C. Other Subcontractor/Supplier															
D. Prime Contractor															
E. Total Bid															

ETHNICITY CODES: AA = AFRICAN AMERICAN H = HISPANIC W = WOMAN  
A = ASIAN NA = NATIVE AMERICAN

OUSD FORM 2

SUBCONTRACTOR CERTIFICATION OF DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

To be completed by DVBE Subcontractor/Supplier or Subordinate Subcontractor/Suppliers.

Note: DVBE information is collected for record keeping and informational purposes only.

PART I - IDENTIFICATION INFORMATION (check one)

Subcontractor/Supplier:  
A firm directly employed  
by a prime contractor.

Subordinate Subcontractor/Supplier:  
A firm employed by subcontractor/supplier

PRIME SUBCONTRACTOR NAME: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_ BUSINESS ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

DISTRICT PROJECT NAME: \_\_\_\_\_

PART II - DVBE PARTICIPATION

Subcontractors/Suppliers employed by architectural, engineering, environmental, land surveying or construction management firms complete this part after your employer is selected by the School District.

- A. After reading the Definitions of the reverse side, check the appropriate Business Enterprise designation of or your firm. Enter the dollar amount of the bid/proposal in the applicable Base Bid/Proposal and/or Alternate column(s).
- B. List your DVBE subordinate subcontractor/suppliers: If you need additional space, use a separate page. Check their appropriate Business Enterprise designation. Enter the dollar amount of their bid/proposal in the applicable Base Bid/Proposal and/or Alternate column(s). All those listed must also complete an of these forms.
- C. Enter the non-DVBE dollar amount included in your bid/proposal under the applicable Base Bid/Proposal and/or Alternate column(s).
- D. Enter the Total of the Base Bid/Proposal and each Alternate column(s).

Business Enterprise	DVBE					Base Bid/ \$Proposal	Alternate #1 \$	Alternate #2 \$	Alternate #3 \$	Alternate #4 \$	Alternate #5 \$
	AA	A	H	NA							
A. Your Firm											
B. Subcontractor or Supplier											
C. Non DVBE Participation											

1920, Lnl4



**OAKLAND UNIFIED SCHOOL DISTRICT**

Community Schools. Thriving Students.

## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Piedmont Finishing Kitchen Project	<b>Site</b>	146
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### Basic Directions

**Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.**

<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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### Contractor Information

<b>Contractor Name</b>	Vila Tulum JV	<b>Agency's Contact</b>	Henry Vila
<b>OUSD Vendor ID #</b>	V071741	<b>Title</b>	Project Manager
<b>Street Address</b>	590 South 33 <sup>rd</sup> Street	<b>City</b>	Richmond
<b>Telephone</b>	510-236-9111	<b>State</b>	CA
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Zip</b>	94804
<b>OUSD Project #</b>	13184	<b>Policy Expires</b>	
		<b>Worked as an OUSD employee?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### Term

<b>Date Work Will Begin</b>	1-11-2018	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	1-23-2019
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### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$75,000.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9799	Fund 21, Measure J	1469901889	6274	\$75,000.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>	12/17/17		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>	12/14/17		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>			
4.	<b>Senior Business Officer, Board of Education</b>				
	Signature	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	Signature	<b>Date Approved</b>			

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