Board Office Use: Legislative File Info.	
File ID Number	17-1677
Introduction Date	8/23/17
Enactment Number	17-1195
Enactment Date	8/23/17 cc

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Joe Dominguez, Deputy Chief Facilities
Marion McWilliams, General Counsel

Board Meeting Date August 23, 2017

Subject Resolution Adopting Resolution Supporting Award of Lease-Leaseback Agreements for Madison Park Academy Expansion Project

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Action Requested Adoption by the Board of Education of Resolution No. 1718-0023 Supporting Award of Lease-Leaseback Agreements to Vila Tulum Joint Ventures for Madison Park Academy Expansion Project

Background On January 25, 2017, the District's Board of Education ("Board") adopted Resolution No. 1617-0010, adopted and published required procedures and guidelines ("Best Value Methodology") for evaluating the qualifications of proposers that ensure the best value selections by the District are conducted in a fair and impartial manner pursuant to Education Code section 17406. In early March 2017, the District solicited proposals for the Lease-Leaseback form of construction delivery of the Madison Park Academy Expansion Project.

Discussion After consideration of all of the proposals, it is in the best interest of the District to award the Lease-Leaseback Agreements to the proposer with the second highest best value score, Vila Tulum Joint Ventures, who has demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.

Recommendation Adoption by the Board of Education of Resolution No. 1718-0023 Supporting Award of Lease-Leaseback Agreements to Vila Tulum Joint Ventures for Madison Park Academy Expansion Project

Fiscal Impact None

Attachments Resolution No. 1718-0023

OAKLAND UNIFIED SCHOOL DISTRICT

DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	LLB - Madison New Construction	Site	215

Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

Attachment Checklist	☐ Proof of general liability insurance, including certificates and endorsements, if contract is over $15,000 ☐ Workers compensation insurance certification, unless vendor is a sole provider

Contractor Information

Contractor Name	Vila Construction/Tulum JV	Agency's Contact	Henry Vila				
OUSD Vendor ID #		Title	Manager				
Street Address	590 South 33rd Street	City	Richmond	State	CA	Zip	94804
Telephone	510-236-9111	Policy Expires					
Contractor History	Previously been an OUSD contractor? X Yes ☐ No	Worked as an OUSD employee? ☐ Yes X No					
OUSD Project #	13124						

Term

Date Work Will Begin	9-14-2017	Date Work Will End By (not more than 5 years from start date)	12-31-2018

Compensation

Total Contract Amount	$	Total Contract Not To Exceed	$ - 0-
Pay Rate Per Hour (If Hourly)	$	If Amendment, Changed Amount	$
Other Expenses		Requisition Number	

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
9450	Fund 21, Measure J	2159905822	6274	$-0-

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.

1.	Division Head	Phone	510-535-7038	Fax	510-535-7082
	Director, Facilities Planning and Management				
	Signature		Date Approved	8/10/2017	
2.	General Counsel, Department of Facilities Planning and Management				
	Signature		Date Approved	8/10/17	
3.	Deputy Chief, Facilities Planning and Management				
	Signature		Date Approved		
4.	Senior Business Officer, Board of Education				
	Signature		Date Approved		
5.	President, Board of Education				
	Signature		Date Approved		

THIS FORM IS NOT A CONTRACT

RESOLUTION NO. 1718-0023
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION
RESOLUTION SUPPORTING AWARD OF LEASE-LEASEBACK AGREEMENTS TO VILA TULUM JOINT VENTURES FOR MADISON PARK ACADEMY EXPANSION PROJECT

WHEREAS, the Oakland Unified School District ("District") is currently undertaking a project known as at the Madison Park Academy Expansion Project ("Project"); and

WHEREAS, on January 25, 2017, the District's Board of Education ("Board") adopted Resolution No. 1617-0010, adopted and published required procedures and guidelines ("Best Value Methodology") for evaluating the qualifications of proposers that 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, which was advertised in the Oakland Post, a newspaper published in the District, on March 1, 2017, the notice published at least 10 days before the date for receipt of the proposals; and

WHEREAS, the Request for Qualifications and Proposals, which was also advertised in El Mundo Oakland, a newspaper published in the county where the project is located, on March 2, 2017, the notice was published at least 10 days before the date for receipt of the proposals; and

WHEREAS, attached hereto as **Exhibit "A"** to this Resolution are copies of the Copies of Notice for the advertisements; and

WHEREAS, District staff, in conjunction with District consultants, have reviewed proposals for the Project submitted in response to the Request for Proposals issued on March 1, 2017 in accordance with the adopted Best Value Methodology and taking into consideration the proposers' demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required; and

WHEREAS, the Request for Qualifications and Proposals provided that the "[s]elected developer must be able to execute the District's standard form of Site Lease and Facilities Lease ... attached to this RFQ/P...;" and

WHEREAS, Education Code section 17406 provides that "if the selected proposer refuses or fails to execute the tendered instrument, the governing board of the school district may award the instrument to the proposer with the second highest best value score if the governing board of the school district deems it to be for the best interest of the school district;" and

WHEREAS, the highest ranked proposer sought changes to the District's standard form of Site Lease and Facilities Lease that were not acceptable to the District and ultimately did not execute the tendered instrument attached to the Request for Qualifications and Proposals; and

WHEREAS, it is in the best interest of the District to use the funds currently budgeted to provide facilities to the deserving students and staff at Madison Park Academy as soon as possible; and

WHEREAS, after consideration of all of the proposals, the Board hereby awards the Site Lease and Facilities Lease ("Lease-Leaseback Agreements") to Vila Tulum Joint Ventures, who was the second highest best value score according to the adopted Best Value Methodology for the Project; and

WHEREAS, Vila Construction Co. and Tulum Innovative Engineering, Inc. have been prequalified pursuant to Public Contract Code section 20111.6; and

WHEREAS, Education Code section 17406 provides that the school district governing board shall issue a written decision supporting it contract award and stating in detail the basis of the award.

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 it is in the best interest of the District to award the Lease-Leaseback Agreements to the proposer with the second highest best value score, Vila Tulum Joint Ventures, who has demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.

Section 4. That the Superintendent and her designees are authorized pursuant to this Resolution to take any and all actions that are necessary to carry out, give effect to and comply with the terms and intent of this Resolution, save those approvals and or actions reserved to the Governing Board.

APPROVED, PASSED AND ADOPTED by the Board of Education the Oakland Unified School District on this 23rd day of August, 2017, by the following vote:

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

NOES: None

ABSTENTIONS: None

ABSENT: Shanthi Gonzales

James Harris
President, Board of Education of the
Oakland Unified School District

Attested to:

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

EXHIBIT A

COPY OF NOTICE

CALIFORNIA NEWSPAPER SERVICE BUREAU

DAILY JOURNAL CORPORATION

Mailing Address : 915 E FIRST ST, LOS ANGELES, CA 90012
Telephone (800) 788-7840 / Fax (800) 464-2839
Visit us @ www.LegalAdstore.com

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

COPY OF NOTICE

Notice Type:	BID NOTICE INVITING BIDS
Ad Description	RFQ/P #001-17/LEASE-LEASEBACK CONSTRUCTION SERVICES (the Madison Park Academy Expansion)

To the right is a copy of the notice you sent to us for publication in the OAKLAND POST. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

03/01/2017

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication. If you prepaid this order in full, you will not receive an invoice.

CNS# 2980903

OAKLAND UNIFIED SCHOOL DISTRICT REQUEST FOR QUALIFICATIONS AND PROPOSALS LEASE-LEASEBACK CONSTRUCTION SERVICES RFQ/P #001-17

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide constructability review, value engineering, master scheduling, site logistic planning, cost estimating, and construction services for the development and construction for the Madison Park Academy Expansion ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion is available at the District website (www.ousd.org) for you 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 on CD or USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

OAKLAND UNIFIED SCHOOL DISTRICT
Joe Dominguez
Deputy Chief
Division of Facilities Planning & Management
955 High Street
Oakland, CA 94601
RFQ/P #001-17

ALL RESPONSES ARE DUE BY 1:00 P.M. ON MONDAY, MARCH 20, 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 informalities 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 information meeting will be conducted on **Friday, March 10, 2017 at 2:00 P.M.** The meeting will be held at the District's Madison Park Academy located at 400 Capistrano Drive, Oakland, Ca 94603.

Drawings and specifications are available at the following link https://hkit.box.com/s/o62u860fmqrjm2l0ymwydwm0l2fpam52

Questions regarding this RFQ/P may be directed to Tadashi Nakadegawa, Director of Facilities, Tadashi.nakadegawa@ousd.org with a cc to Cesar Monterrosa, Director of Facilities, cesar.monterrosa@ousd.org, and to Jenny Wong, Division Coordinator jenny.wong@ousd.org and must be submitted on or by **1:00 P.M. ON Tuesday, March 14, 2017**

In this RFQ/P the term Respondent identifies the firm or partnership submitting as the entity to enter into the terms of the Agreements 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 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 20111.6

3/1/17
CNS-2980903#
OAKLAND POST

* A 0 0 0 0 0 4 3 6 8 6 1 0 *

CALIFORNIA NEWSPAPER SERVICE BUREAU

DAILY JOURNAL CORPORATION

Mailing Address : 915 E FIRST ST, LOS ANGELES, CA 90012
Telephone (800) 788-7840 / Fax (800) 464-2839
Visit us @ www.LegalAdstore.com

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

COPY OF NOTICE

Notice Type:	BID NOTICE INVITING BIDS
Ad Description	RFQ/P #001-17/LEASE-LEASEBACK CONSTRUCTION SERVICES (Madison Park Academy Expansion)

To the right is a copy of the notice you sent to us for publication in the EL MUNDO. Please read this notice carefully and call us with any corrections The Proof of Publication will be filed with the County Clerk, if required, and mailed to you after the last date below. Publication date(s) for this notice is (are):

03/02/2017

The charge(s) for this order is as follows. An invoice will be sent after the last date of publication If you prepaid this order in full, you will not receive an invoice

Publication	$278.76
Total	$278.76

CNS# 2980909

OAKLAND UNIFIED SCHOOL DISTRICT REQUEST FOR QUALIFICATIONS AND PROPOSALS LEASE-LEASEBACK CONSTRUCTION SERVICES RFQ/P #001-17

Oakland Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations or professional organizations to provide constructability review, value engineering, master scheduling, site logistic planning, cost estimating, and construction services for the development and construction for the Madison Park Academy Expansion ("Project") in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion is available at the District website (www.ousd.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 on CD or USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

OAKLAND UNIFIED SCHOOL DISTRICT
Joe Dominguez
Deputy Chief
Division of Facilities Planning & Management
955 High Street
Oakland, CA 94601
RFQ/P #001-17

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A non-mandatory information meeting will be conducted on **Friday, March 10, 2017** at **2:00 P.M.** The meeting will be held at the District's Madison Park Academy, located at 400 Capistrano Drive, Oakland, CA 94603.

Drawings and specifications are available at the following link: https://filebox.com/s/b62u860/hcorjm2t0ymwydwm0t2?pam52

Questions regarding this RFQ/P may be directed to Tadashi Nakadegawa, Director of Facilities, Tadashi.nakadegawa@ousd.org with a cc: to Cesar Monterrosa, Director of Facilities, cesar.monterrosa@ousd.org, and to Jenny Wong, Division Coordinator, jenny.wong@ousd.org and must be submitted on or by **1:00 P. M. ON Tuesday, March 14, 2017**.

In this RFQ/P the term Respondent identifies the firm or partnership submitting as the entity to enter into the terms of the Agreements 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 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 20111.6

3/2/17
CNS-2980909#
EL MUNDO

* A 0 0 0 0 0 4 3 6 8 6 2 2 *

OAKLAND UNIFIED SCHOOL DISTRICT

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 Construction Company

Project Name: Madison Expansion **Project No.:** 13124

Contract Term: Intended Start: 9-14-2017 Intended End: 12-31-2018

Annual (if annual contract) or Total (if multi-year agreement) Cost $0.00

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?

Lease Leaseback process per Ed Code 17406

Summarize the services this Vendor will be providing.

Lease Leaseback delivery of the Tenant Improvements for construction of the Madison High school Expansion, located at 400 Capistrano Drive

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

If No, please answer the following:
1) How did you determine the price is competitive?

Process approved to establish Guaranteed Maximum Price ("GMP")

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, competitve 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 competitvely 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**

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

CONTRACT DOCUMENTS

For all or a portion of the following Site:

Madison Park Academy Expansion Project
400 Capistrano Drive
Oakland, CA 94603
APN: 45-5369-10 and 45-5320-1-4

By and between

Oakland Unified School District
955 High Street
Oakland, CA 94601
And

Vila Tulum Joint Ventures
590 South 33rd Street
Richmond, CA 94804

Dated as of August 24, 2017

HAZARDOUS MATERIALS
PROCEDURES & REQUIREMENTS

1. Summary

This document includes information applicable to hazardous materials and hazardous waste abatement.

2. Notice of Hazardous Waste or Materials

a. Developer shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following materials are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:

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

(2) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.

b. Developer's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Developer, its Subcontractors, suppliers, or anyone else for whom Developer is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.

c. In response to Developer's written notice, the District shall investigate the identified conditions.

d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Developer in writing, stating reasons. If the District and Developer cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Developer shall proceed with the Work as directed by the District.

e. If after receipt of notice from the District, Developer does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

f. If Developer stops Work in connection with any hazardous condition and in any area affected thereby, Developer shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

3. **Additional Warranties and Representations**

a. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable laws and contractual requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).

b. Developer represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.

c. Developer represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Developer accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

4. **Monitoring and Testing**

a. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

b. Developer acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Developer. In the event District elects to perform these activities and tests, Developer shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these

activities and tests. Developer will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

c. Notwithstanding District's rights granted by this paragraph, Developer may retain its own industrial hygiene consultant at Developer's own expense except as otherwise permitted by the Contract Documents, and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Developer relating to the Work and Developer shall immediately provide that documentation upon request.

5. **Compliance with Laws**

a. Developer shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

b. Developer represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:

(1) The protection of the public health, welfare and environment;

(2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products, radioactive material, or other hazardous materials;

(3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, radioactive material, or hazardous waste materials or other waste materials of any kind; and

(4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

6. **Disposal**

a. Developer has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Developer must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

b. Developer shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate

"Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.

c. Developer shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Developer shall not use any disposal facility to which District has objected. Developer shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

7. **Permits**

a. Before performing any of the Work, and at such other times as may be required by applicable law, Developer shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Developer shall submit evidence satisfactory to District that it and any disposal facility:

(1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law; and

(2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Developer agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Developer shall not conduct any Work involving asbestos-containing materials or PCBs unless Developer has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Developer. Developer shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Developer observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Developer performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Developer in securing the permit or giving the notice, but the Developer shall prepare for District

review and execution upon approval, all necessary applications, notices, and other materials.

8. **Indemnification**

To the fullest extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 9601 *et seq.*).

9. **Termination**

District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Developer knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700, in relevant part, provides:

> Every employer except the State shall secure the payment of compensation in one or more of the following ways:
>
> a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state; and/or
>
> b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: August 15, 2017

Proper Name of Developer: Vila Tulum Joint Ventures

Signature: [signature]

Print Name: Richard H. Vica

Title: President

(In accordance with Labor Code sections 1860 and 1861, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: August 15, 2017

Name of Developer: Vila Tulum Joint Ventures

Signature: [signature]

Print Name: Richard H. Ulla

Title: President

END OF DOCUMENT

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Developer shall certify that it will provide a drug-free workplace by doing all of the following:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

(3) The dangers of drug abuse in the workplace.

(4) The person's or organization's policy of maintaining a drug-free workplace.

(5) The availability of drug counseling, rehabilitation, and employee-assistance programs.

(6) The penalties that may be imposed upon employees for drug abuse violations.

c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Date: August 15, 2017

Proper Name of Developer: Vila Tulum Joint Ventures

Signature: Richard H. Vila

Print Name: Richard H. Vila

Title: President

END OF DOCUMENT

TOBACCO-FREE ENVIRONMENT CERTIFICATION

Pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq., and District Board policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school-owned vehicles and vehicles owned by others while on District property.

I acknowledge that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents, to use tobacco and/or smoke on the Project site.

Date: August 15, 2017

Name of Developer: Vila Tulum Joint Ventures

Signature: [signature]

Print Name: Richard A. Vila

Title: President

END OF DOCUMENT

HAZARDOUS MATERIALS CERTIFICATION

Developer hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Developer's work on the Project for District.

Developer further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Developer if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing New Hazardous Material will be immediately rejected and this Work will be removed at Developer's expense at no additional cost to the District.

Developer has read and understood the document titled Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: August 15, 2017

Name of Developer: Vila Tulum Joint Ventures

Signature: [signature]

Print Name: Richard H. VILA

Title: President

END OF DOCUMENT

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to the Developer that:

(1) Developer's work may disturb lead-containing building materials.

(2) Developer shall notify the District if any work may result in the disturbance of lead-containing building materials.

(3) Developer shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburses when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Developer and its employees will be providing services for the District, and because the Developer's work may disturb lead-containing building materials, DEVELOPER IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead-Safe Schools Protection Act. Under this act, the Department of Health Services is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented

safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to those regulations. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. Regulated work includes, but is not limited to, the following:

a. Demolition or salvage of structures where lead or materials containing lead are present;

b. Removal or encapsulation of materials containing lead;

c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;

d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and

g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Developer, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

Developer shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. **Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act**

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The RRP requirements apply to all contractors who disturb lead-based paint in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors. If a

DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. **Developer's Liability**

If the Developer fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Developer will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Developer to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Developer to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Developer shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Developer.

THE DEVELOPER HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;

2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DEVELOPER. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: August 15, 2017

Name of Developer: Vila Tulum Joint Ventures

Signature: [signature]

Print Name: Richard H. Vila

Title: President

END OF DOCUMENT

IMPORTED MATERIALS CERTIFICATION

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site and shall be provided to the District at least ten (10) days before delivery. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

Certification of: ☐ Delivery Firm/Transporter ☐ Supplier ☐ Manufacturer
☐ Wholesaler ☐ Broker ☐ Retailer
☐ Distributor ☐ Other _____

Type of Entity ☐ Corporation ☐ General Partnership
☐ Limited Partnership ☐ Limited Liability Company
☐ Sole Proprietorship ☐ Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

_____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: August 15, 2017

Proper Name of Firm: VICA Tocum Joint Ventures

Signature: _____

Print Name: Richard H. VICA

Title: President

END OF DOCUMENT

CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Developer currently under contract with the District; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Developer.

Developer certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that applies):

_____ Developer has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Developer's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Developer's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Developer has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Developer's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Developer certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Developer who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Developer's employees and its subcontractors' employees is

Name: _____

Title: _____

_____ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of contractor shall come in contact with the District pupils.

Developer's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Developer.

Date: August 15, 2017

Name of Developer: Vila Tulum Joint Ventures

Signature: _____

Print Name: Richard H. Vica

Title: President

END OF DOCUMENT

ROOFING PROJECT CERTIFICATION

This form shall be executed by all contractors, materials manufacturers, or vendors involved in a bid or proposal for the repair or replacement of a roof of a public school building where the project is either for repair of more than 25% of the roof or that has a total cost more than $21,000 ("roofing project") and submitted to the District when the award is made.

Certification of: ☐ Contractor ☐ Materials Manufacturer
☐ Vendor ☐ Other _____

I, _____, _____, certify that I have not
[Name] [Name of Firm]
offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roofing project contract. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I, _____, _____, certify that
[Name] [Name of Firm]
I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____, have the following
[Name] [Name of Firm]
financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roofing project contract (provide Name and Address of Building, and Contract Date and Number):

_____

_____

_____

_____

_____

_____

_____

_____

_____

By my signature below, I hereby certify that, to the best of my knowledge, the contents of this disclosure are true, or are believed to be true. I further certify on behalf of the Firm that I am aware of section 3000 et seq. of the California Public Contract Code, and the sections referenced therein regarding the penalties for providing false information or failing to disclose a financial relationship in this disclosure. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: August 15, 2017

Proper Name of Firm: Vila Tulum Joint Ventures

Signature:

Print Name: Richard H. Ulca

Title: President

END OF DOCUMENT

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Sections 2202-2208)

Prior to bidding on or submitting a proposal for a contract for goods or services of $1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

☒ **OPTION 1.** Bidder/Proposer is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b), and we are not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

☐ **OPTION 2.** Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

CERTIFICATION:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

Vendor Name/Financial Institution (Printed) VILLA TULLY JOINT VENTURES	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing Richard H. Villa President	*Date Executed* August 15, 2017

END OF DOCUMENT

ESCROW AGREEMENT IN LIEU OF RETENTION
Public Contact Code Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 20___, by and between the Oakland Unified School District ("District"), whose address is 955 High Street, Oakland, CA 94601, and Vila Tulum Joint Ventures ("Developer"), whose address is 590 South 33rd Street, Richmond, CA 94804, and _____ ("Escrow Agent"), a state or federally chartered bank in the state of California, whose address is _____.

For the consideration hereinafter set forth, District, Developer, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Developer has the following two (2) options:

   ☒ Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No.___ entered into between District and Developer for the _____ Project, in the amount of _____ Dollars ($_____) dated, _____, 20_____, (the "Contract"); **or**

   ☐ On written request of Developer, District shall make payments of the retention earnings for the above referenced Contract directly to Escrow Agent.

   When Developer deposits the securities as a substitute for Contract earnings (first option), Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Developer.

   Securities shall be held in name of Oakland Unified School District, and shall designate Developer as beneficial owner.

2. District shall make progress payments to Developer for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.

3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Developer until the time that the escrow created under this Escrow Agreement is terminated. Developer may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Developer shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The

District will charge Developer $_____ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Developer, and Escrow Agent.

5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Developer and shall be subject to withdrawal by Developer at any time and from time to time without notice to District.

6. Developer shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Developer.

7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in the event of default by Developer. Upon seven (7) days' written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.

8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Developer has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Developer all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on written notifications from District and Developer pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Developer shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Developer in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

President
Title

Richard H. Ucla
Name

Signature

590 South 33rd St.
Address Richmond Ca. 94804

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

At the time that the Escrow Account is opened, District and Developer shall deliver to Escrow Agent a fully executed copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

President
Title

Richard H. Ucla
Name

Signature

590 South 33rd Street
Address Richmond Ca. 94804

END OF DOCUMENT

GUARANTEE FORM

_____ ("Contractor") hereby agrees that the _____ _____ ("Work" of Contractor) which Contractor has installed for the Oakland Unified School District ("District") for the following project:

Madison Park Academy Expansion Project

("Project" or "Contract") has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of _____ year(s) from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is _____, 20___.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the District, but not later than seven (7) days after being notified in writing by the District, the undersigned authorizes the District to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Representatives to be contacted for service subject to terms of Contract:

Name: _____

Address: _____

Phone NO.: _____

END OF DOCUMENT

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS _____ DAY OF _____, 20___ by and between the Oakland Unified School District ("District") and _____ _____ ("Developer"), whose place of business is _____ _____ _____.

RECITALS:

WHEREAS, District and Developer entered into a Facilities Lease and Site Lease for the following project: Madison Park Academy Expansion Project ("Contract" or "Project") in the County of Alameda, California.

WHEREAS, The Work under the Contract was completed on _____, 20___ and a Notice of Completion was recorded with the County Recorder on _____, 20___.

NOW, THEREFORE, it is mutually agreed between District and Developer as follows:

AGREEMENT

1. Developer will only be assessed liquidated damages as detailed below:

Original Guaranteed Maximum Price	$_____
Modified Guaranteed Maximum Price	$_____
Payment to Date	$_____
Liquidated Damages	$_____
Payment Due Developer	$_____

2. Subject to the provisions hereof, District shall forthwith pay to Developer the undisputed sum of _____ Dollars ($_____) under the Contract for Tenant Improvement Payments, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.

3. Developer acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 4 and continuing obligations described in Paragraph 6. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Developer against District and all of its respective agents, employees, trustees, inspectors, assignees, consultants and transferees, except for the Lease Payments under the Contract, any Disputed Claim that may be set forth in Paragraph 6 and the continuing obligations described in Paragraph 6 hereof.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

Claim No.	Description of Claim	Amount of Claim	Date Claim Submitted
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____

[If further space is required, attach additional sheets showing the required information.]

5. Consistent with California Public Contract Code section 7100, Developer hereby agrees that, in consideration of the payment set forth in Paragraph 2 hereof, Developer hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract, except for the Lease Payments. .

6. Guarantees and warranties for the Work, and any other continuing obligation of Developer, shall remain in full force and effect as specified in the Contract Documents.

7. To the furthest extent permitted by California law, Developer shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Contract unless caused wholly by the sole negligence or willful misconduct of the District.

8. Except as provided for specifically herein, Developer hereby waives the provisions of California Civil Code section 1542 which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by

law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

* * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * *

SCHOOL DISTRICT: _____

Signature: _____

Print Name: _____

Title: _____

DEVELOPER: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DVBE SUBCONTRACTOR/SUPPLIER CONSTRUCTION CONTRACTS.

Note: DVBE information is being collected for record keeping and informational purposes only and will not be considered in the award of contract.

DVBE DOLLAR PARTICIPATION OF BID/PROPOSAL. This section is to be completed for all Prime Contractor's bid over $15,000.00 and for all modifications to that contract. Disabled Veteran Contractors claiming preference and all other Prime Contractors must complete the following and comply with the required percentage of DVBE subcontractors or meet the good effort for bids over $75,000.

PRIME BIDDER: _____ CONTACT PERSON: _____

ADDRESS: _____

PHONE NUMBER: _____ FAX NUMBER: _____ TOTAL BID: _____

PROJECT NAME OR DESCRIPTION: _____

A. List your DVBE subcontractors/suppliers. If the subcontractor has a subordinate subcontractor, list the subordinate on the line following the subcontractor in brackets, e.g. **(ABC Painting)** and complete the information for both. In the appropriate DVBE column, enter the dollar amount and fill in the Ethnicity Code and Gender Code. If the subcontractor or supplier is a woman and not an ethnic minority, please add a separate page stating this fact.)
B. Enter the total in Line B for each column.
C. Enter the dollar amount of the bid to be performed by non-DVBE firms.
D. Enter the dollar amount of the bid to be performed by the Prime Contractor.
E. Enter the sum of the column totals in Line B, C, and D.

NOTE: Please be aware that the final determination of DVBE compliance is made based on the contract amount resulting from the District's acceptance or rejection of alternates.

	BASE BID/PROPOSAL					ALTERNATE #1					ALTERNATE #2				
	DVBE					DVBE					DVBE				
LIST DVBE subs/suppliers	AA W	H W	A W	NA W		AA W	H W	A W	NA W		AA W	A W	H W	NA W	
A. Subcontractor or Supplier, Location	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1.															
2.															
3.															
4.															
5.															
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11.															
12.															
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14.															
15.															
16.															
17.															
18.															
19.															
20.															
B. Subtotal															
C. Other Subcontractor/Supplier															
D. Prime Contractor															
E. Total Bid															

	ALTERNATE #3					ALTERNATE #4					ALTERNATE #5				
	DVBE					DVBE					DVBE				
	AA	A	H	NA		AA	A	H	NA		AA	A	H	NA	
A. Subcontractor or Supplier	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1.															
2.															
3.															
4.															
5.															
6.															
7.															
8.															
9.															
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

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above DVBE subcontractors and subcontractor's amounts as reflected in the bid documents for this project.

Owner/Authorized Representative (Signature/ Print)	Title	Date

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 on 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											

D. Total of Each Column						

PART III - SUBCONTRACTOR/SUPPLIER AND SUBORDINATE SUBCONTRACTOR/SUPPLIER CHECK LIST

Your bid/proposal should contain the following: Copy of your and your subordinate subcontractor's certification of DVBE status.

CERTIFICATION

I, _____ certify that I am this firm's Chief Executive Officer. I am aware of Section 12560 et seq. of the Government Code providing for the imposition of treble damages for making false claims against the State and Section 10115.10 of the Public Contract Code making it a crime for intentionally making an untrue statement in this certification.

_____ _____

Signature of Chief Executive Officer Date

SITE LEASE

For all or a portion of the following Site:

Madison Park Academy Expansion Project
400 Capistrano Drive
Oakland, CA 94603
APN: 45-5369-10 and 45-5320-1-4
By and between

Oakland Unified School District
955 High Street
Oakland, CA 94601

And

Vila Tulum Joint Ventures
590 South 33rd Street
Richmond, CA 94804

Dated as of August 24, 2017

SITE LEASE

This site lease ("Site Lease") dated as of **August 24, 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 400 Capistrano Drive, Oakland, CA 94603, known as Madison Park Business & Art Academy, 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 Madison Park Academy Expansion 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

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

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

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

1. Definitions

Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.

2. Exhibits

The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.

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

2.2. Exhibit B - Description of the Project Site: The map or diagram depiction of the Project Site

3. Lease of the Project Site

The District hereby leases to the Developer, and the Developer hereby leases from the District the Project Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Developer within three (3) days of execution of this Site Lease.

4. Leaseback of the Project Site

The Parties agree that the Project Site will be leased back to the District pursuant to the Facilities Lease for the term thereof.

5. Term

The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the

Developer, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.

6. Payment

In consideration for the lease of the Project Site by the District to the Developer and for other good and valuable consideration, the Developer shall pay One Dollar ($1.00) to the District upon execution of this Site Lease.

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.

11. Right of Entry

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

12. Quiet Enjoyment

Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site, the District hereby covenants and agrees that it will not take any action to prevent the Developer from having quiet and peaceable possession and enjoyment of the Project Site during the term hereof and will, at the request of the Developer, to the extent that it may lawfully do so, join in any legal action in which the Developer asserts its right to such possession and enjoyment.

13. Waste

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

14. Further Assurances and Corrective Instruments

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

15. Representations of the District

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

15.1. Due Organization and Existence

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

15.2. Authorization

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

15.3. No Violations

To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.

15.4. CEQA Compliance

The District has complied with all 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.

16.3. No Violations

Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Developer is now a party or by which the Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Developer, or upon the Project Site, except for Permitted Encumbrances.

16.4. No Bankruptcy

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

16.5. No Litigation

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

17. Insurance and Indemnity

The Developer and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing

This Site Lease may be assigned and/or the Project Site subleased, as a whole or in part, by the Developer only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District

The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Developer's interests indicated in this Site Lease.

20. Liens and Further Encumbrances

Developer agrees to keep the Project Site and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site or the Project. Pursuant to the Facilities Lease, Developer further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

21. Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 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:	**If to Developer:**
Oakland Unified School District 955 High Street Oakland, CA 94601 Attn: Kayla Johnson-Trammell, Superintendent	Vila Tulum Joint Ventures 590 South 33rd Street Richmond, CA 94804 Attn: Henry Vila, Senior Vice President
With a copy to:	**With a copy to:**
Deidree Y.M.K. Sakai, Esq. Dannis Woliver Kelley 275 Battery Street, Suite 1150 San Francisco, CA 94111	Quinlan S. Tom, Esq. Wendel Rosen Black & Dean 1111 Broadway, 24th Floor Oakland, CA 94607

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.

26. Obligations Absolute

The Developer agrees that the obligations of the Developer are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

27. Execution in Counterparts

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

28. Developer and District Representatives

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

29. Applicable Law

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

30. Attorney's Fees

If either party brings an action or proceeding involving the School Site or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.

31. Captions

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

32. Prior Agreements

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

33. Further Assurances

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

34. Recitals Incorporated

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

35. Time of the Essence

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

36. Force Majeure

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

37. Interpretation

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

[Signatures on Following Page.]

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: 8/24, 2017

Oakland Unified School District

By: _____

Name: James Harris

Title: President, Board of Education

_____

Kyla R. Johnson-Trammell

Secretary, Board of Education

Dated: 8, 15, 2017

Vila Tulum Joint Ventures

By: _____

Name: Richard H. Vila

Title: President

EXHIBIT A

LEGAL DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Madison Park Academy Expansion Project
400 Capistrano Drive
Oakland, CA 94603

In the City of Oakland, County of Alameda, State of California, described as follows:

Beginning a point in San Leandro Creek at the southwestern corner of Lot 4, as said lot is shown on the map accompanying the report of the Referees I Partition in the Action of John P Walker Vs Carmen Peralta Schwartz et al., in the Superior Court, Alameda County, State of California on September 10, 1896 and numbered on the register of said Court as No. 13006; and running thence along the western line of said Lot 4 north 11° 22' east 48.74 to the southwestern line of Lot 25, as said lot is shown on the "Map of the Cunha and Walker Property, Brooklyn, Tp., Alameda County, California 1909" filed August 2, 1909 in Book 24 of Maps, page 90, in the Office of the County Recorder of Alameda County; thence along the last named line north 63° 07' 30" west 553.07 feet to the center line of 105th Avenue, formerly South Bartlett Avenue, as shown on said last mentioned map; thence along the last named line north 20° 54' 30" east 13.07, feet, to a line drawn parallel with the southwestern line of said lot 25, and distant at right angles 13 feet northeasterly therefrom; thence along said parallel line south 63° 07' 30" east 550 feet, more or less, to the western line of said Lot 4; thence along said parallel line north 11° 22' east 742.90 feet to the southern line of the tract of land shown on the map of "Tract 711, Oakland, California , Oakland, Alameda County, California", filed July 18, 1945 in Book 11 of maps, pages 14 and 15 in the office of the County Recorder of Alameda County, and along the southern line of the parcel of land described in the deed

by Louis Gallino and Rina Gallino to Oakland School District of Alameda County, date April 4, 1945 in Book 4693 of Official Records of Alameda County page 163, under Recorder's Series No. SS-22179 south 81° 25' east 1123.57 feet to the western line of the tract of land shown on the map of "Tract720, City of Oakland, Alameda California " filed November 19, 1945 in Book 11 of Maps pages 36 and 37, in the office of the County Recorder of Alameda County; thence along the last named line south 8° 35' west 814.71 feet, more or less, to a point in San Leandro Creek on the southern line of the 5 acre tract of land secondly described in the deed by John Frank and Maria Frank to Louis Gallino and Rina Gallino dated March 14, 1921 in Book 3076 of Deeds page 94, Alameda County Records; thence along the last named line and along the southern line of the 15 acre tract of land described in the deed by Louis P. Selby and David F. Selby to Louis Gallino and Rina Gallino dated February 1, 1924 recorded February 6, 1924 in Book 609 of Official Records, page 367 under Recorder's Series No. T-94289, as follows; north 84° 15' west 338.58 feet, south 86° 30' west 251.16, south 80° west 217.80 feet, north 53° west 314.82 and north 82° 45' west 92.40 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof described as follows:
Beginning at a point in San Leandro Creek at the intersection of the western line of the tract of land sown on the map of "Tract 720, City of Oakland, Alameda County, California" filed November 19, 1945 in Book 11 of Maps, pages 36 and 37 in the office of the County Recorder of Alameda County, with the southern line of the 5 acre tract secondly described in the deed by John frank and Marie Frank to Louis Gallino and Rina Gallino dated March 14, 1921, recorded 15, 1921 in Book 3076 of Deeds, page 94, Alameda County Records; running thence the southerly line of said tract of land described in the deed by Louis P. Selby and David F. Selby to Louis Gallino and Rina Gallino dated February 1, 1924 and recorded February 6, 1924 in Book 609 of Official Records of Alameda County, at page 367, under Recorders Series No. T-94289, as follows: north 84° 15' west 338.58 feet, and south 86° 30' west 83.68 feet; thence north 8° 35' east 282.81 feet; thence south 81° 25' east 420 feet, more or less to the western line of said "Tract 720"; thence along the last named line south 8° 35' west 248.52 feet, more or less to the point of beginning.

ALSO EXCEPTING THEREFROM: Parcels A and B described in the Quitclaim Deed to Alameda County Flood Control and Water Conservation District recorded April 8, 1980.

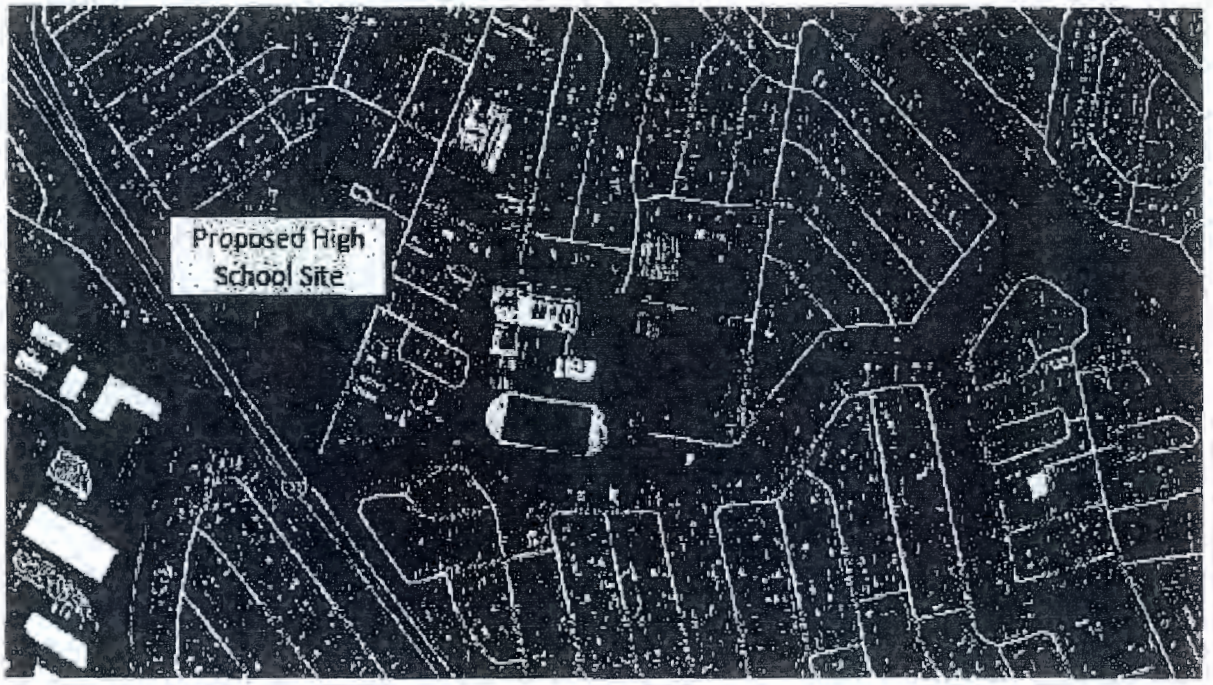
Being Assessor's Parcel Nos. 45-5369-10 and 45-5320-1-4

EXHIBIT B

DESCRIPTION OF PROJECT SITE

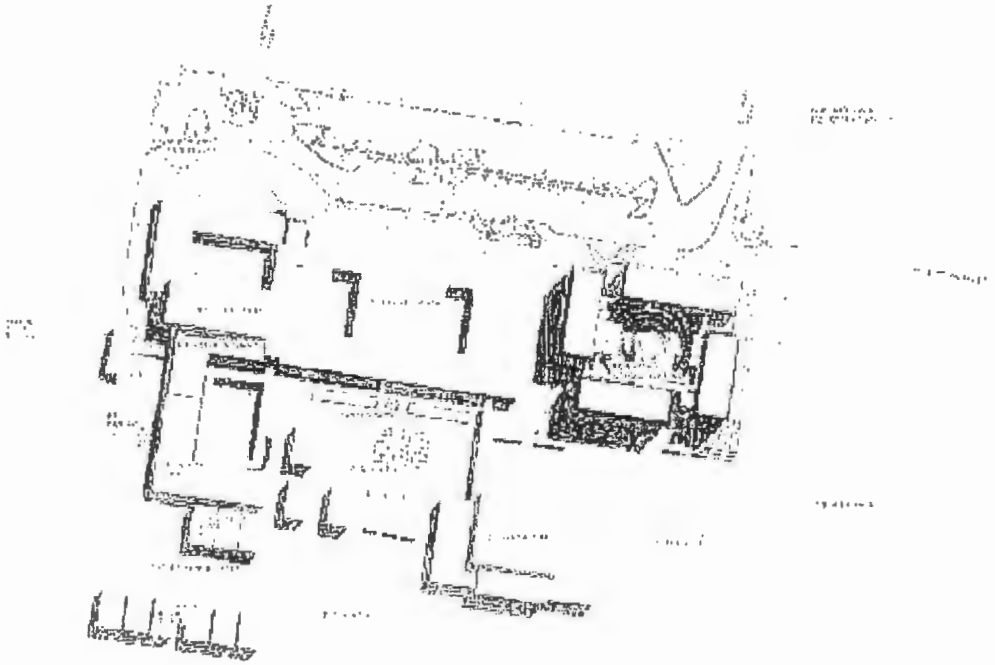
Attached is a map or diagram showing the location of the School Site that is subject to this Site Lease and upon which Developer will construct the Project.

Figure 2: Project Site and Surroundings



Source: GoogleEarth, as annotated by Lamphier-Gregory.

Figure 3: Site Plan



Source: Byrens Kim Design Works, dated July 6, 2015

FACILITIES LEASE

For all or a portion of the following Site:

Madison Park Academy Expansion Project
400 Capistrano Drive
Oakland, CA 94603
APN: 45-5369-10 and 45-5320-1-4

By and between

Oakland Unified School District
955 High Street
Oakland, CA 94601

And

Vila Tulum Joint Ventures
590 South 33rd Street
Richmond, CA 94804

Dated as of August 24, 2017

TABLE OF CONTENTS

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of August 24, 2017 ("Effective Date"), is made and entered into by and between Vila Tulum Joint Ventures ("Developer"), a California joint venture duly organized and existing under the laws of the State of California, as sublessor, and Oakland Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

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

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the School Site which will include construction of improvements to be known as the Madison Park Academy Expansion ("Project"); and

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at 400 Capistrano Drive, Oakland, CA 94603, known as Madison Park Business & Art Academy, particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by reference ("School Site"); and

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

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

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

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

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

WHEREAS, 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 _____ 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;

1.6.2 The Site Lease.

1.6.3 This Facilities Lease.

1.6.4 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.

1.6.5 Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Developer and the District consent in writing which will not impair or impede the operation of the Project Site.

2. Exhibits

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

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

2.2 **Exhibit B - Description of the Project Site:** The map or diagram depiction of the Project Site.

2.3 **Exhibit C - Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions:** A detailed description of the Guaranteed Maximum Price and the provisions related to the payment of that amount to the Developer, including Attachment 3, the Schedule of Lease Payments and Payoff Dates and Amounts.

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

2.5 **Exhibit D-1 – Special Conditions Provisions:** The provisions describing conditions specific to the Project's construction.

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

2.7 **Exhibit F - Construction Schedule**

2.8 **Exhibit G – Schedule of Values**

2.9 **Exhibit H – Project Labor Agreement**

2.10 Exhibit I – Local, Small Local and Small Local Resident Business Enterprise Program

2.11 Exhibit J – Disabled Veterans Business Enterprise Participation Policy

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

4.3.2 An Event of Default by Developer as defined herein and District's election to terminate this Facilities Lease as permitted herein, or

4.3.3 Consummation of the District's purchase option pursuant to the Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Maximum Price Provisions").

4.3.4 A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.

4.3.5 Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

5. Payment

In consideration for the lease of the Project Site by the Developer back to the District and for other good and valuable consideration, the District shall make all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C.**

6. Title

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

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

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

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

7. Quiet Enjoyment

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

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 and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

9.2 Authorization

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

9.3 No Violations

Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Project Site, except Permitted Encumbrances.

9.4 No Bankruptcy

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

9.5 No Encumbrances

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

9.6 Continued Existence

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

9.6.1 Eighteen (18) months following completion of the Project.

9.6.2 One (1) year following expiration or earlier termination of the Term.

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

While the lease documents are in effect, Developer shall give District one hundred twenty (120) days written notice prior to dissolving or terminating the legal existence of Developer.

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. The District plans on value engineering or descoping this Project by over $3 million. 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 equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

10.1.2.2.2 Provides detailed estimate for proposed value-engineering items;

10.1.2.2.3 Defines methodology or approaches that maximize value; and

10.1.2.2.4 Identifies design choices that can be more economically delivered.

10.1.2.3 Constructability Review. Prepare detailed interdisciplinary constructability review within Fourteen (14) days of receipt of the plans from the District that:

10.1.2.3.1 Ensures construction documents are well coordinated and reviewed for errors;

10.1.2.3.2 Identifies to the extent known, construction deficiencies and areas of concern;

10.1.2.3.3 Back-checks design drawings for inclusion of modifications;

10.1.2.3.4 Provides the District with written confirmation that:

10.1.2.3.4.1 Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards.

10.1.2.3.4.2 Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

10.1.2.4 Confirm Modifications to Design Drawings. If the District accepts Developer's comments, including the value-engineering and/or constructability review comments, review the design documents to confirm that those comments are properly incorporated into the final design documents.

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.

10.1.4 Construction Critical Path Schedule and Phasing Plan

Developer shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the constructability review and estimating. Developer shall prepare a full construction critical path schedule for the Project detailing the phasing and construction activities. Developer shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

10.1.5 Construction Planning and Bidding

10.1.5.1 For all of Developer's activities relating to construction planning and bidding, Developer shall comply with all applicable legal requirements, including but not limited to those set forth in Education Code section 17406.

10.1.5.2 Consult with District staff in relation to the existing site. Since this is an occupied campus, staging, barricades and phasing of work needs to be thought through and communicated with the school and community prior to construction starting. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions as well as additional testing or exploration to uncover hidden conditions.

10.1.5.3 Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.

10.1.5.4 Prepare and distribute specifications and drawings provided by District to facilitate bidding to Developer's subcontractors.

10.1.5.5 Review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.

10.1.5.6 Conduct pre-bid conferences. Coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

10.1.5.7 DSA approved plans shall be utilized to receive subcontractor bids and develop the final GMP in accordance with the lease-leaseback agreement forms, including the requirement that the bidding shall take place within one (1) week of notice of DSA approval.

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 unreasonaby 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 Disrict'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 general condition amount, other fees (as submitted with the response to the RFQ/P).

10.1.5.8.3 Behind the bid tabulation sheet mentioned in subdivision 10.1.5.10.2 above should be a sheet that indicates what is included in the general conditions, which should match what was submitted in the response to the RFQ/P.

10.1.5.8.4 Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and subcontractors that provided bids as well as those that were asked to bid, but did not submit a proposal. This sheet should have the dollar amounts for each subcontractor that provided a bid with the first column being the proposed subcontractor for that trade.

10.1.5.8.5 Behind subdivision 10.1.5.10.4 above should be the bids for that trade with the proposed subcontractor bid on top and the other subcontractor bids in descending dollar order.

10.1.5.9 Produce detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.

10.1.5.10 Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.

10.1.6 Other preconstruction services not listed above but are reasonable and necessary to control the budget, schedule and quality of the work will be considered on an ongoing bases.

10.2 Schedule for Preconstruction Services

Services outlined above will commence on the date the District issues a notice to proceed for Preconstruction Services for the Agreement, and conclude upon approval of the Amendment to the Lease Agreements by District's Board on or

about _____, 20__ or termination of this Agreement by either party per the Agreement's terms. It is anticipated that construction will commence on or about October 30, 2017. Any extension shall be subject to reasonable approval in writing by the parties.

10.3 Ownership of Records

It is mutually agreed that all materials prepared by Developer under this Agreement shall become the property of the District and Developer shall have no property right therein whatsoever. Developer hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement.

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 Eighty-one thousand and ninety-five and 00/100 Dollars ($81,095.00), 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 the construction agreement for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

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

10.6 Termination before Construction Phase

10.6.1 Before the Notice to Proceed with for Construction Phase is issued by the District, this Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of such a termination by District, the District shall pay Developer for all 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 of such a termination, the District shall pay Developer no more than the not to exceed amount in Section 10.5 above.

10.7 Construction Phase

Developer shall not commence any construction work before DSA approval of the Plans and Specifications.

11. Construction of Project

11.1 Construction of Project

11.1.1 Developer agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferred from the Contract Documents as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Contract Documents.

11.1.2 Contract Time / Construction Schedule

It is hereby understood and agreed that the Contract Time for this Project shall be four hundred twenty-seven (427) calendar days, commencing with the date upon which the Facilities Lease and the Site Lease are fully executed and delivered to both Parties and ending with completion of the Work which will occur no later than December 31, 2018 ("Contract Time"). The Construction Schedule must be approved by the District.

11.1.3 Schedule of Values

The Developer has provided a schedule of values, approved by the District, which will be attached hereto as **Exhibit G** ("Schedule of Values"). The Schedule of Values must be approved by the District.

11.1.4 Liquidated Damages

Time is of the essence for all work Developer must perform to complete the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of Five thousand and 00/100 Dollars ($5,000.00) per day as liquidated damages for each and every day's delay beyond the Contract Time.

11.1.4.1 It is hereby understood and agreed that this amount is not a penalty.

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

11.1.9 Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE)

This Project is subject to a minimum fifty percent (50%) mandatorty local participation requirement, pursuant to Board Policy BP 7115 and Administrative Regulations AR 7115, attached to the Facilities Lease as Exhibit I.

11.1.10 Disabled Veterans Business Enterprise Participation Policy

This Project is subject to the District's Disabled Veterans Business Enterprise Participation Policy, attached to the Facilities Lease as Exhibit J.

12. Maintenance

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

13. Utilities

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

14. Taxes and Other Impositions

All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within forty-five (45) days after presentation of proof of payment by Developer.

15. Insurance

15.1 Developer's Insurance

The Developer shall comply with the insurance requirements as indicated here and in **Exhibit D** and **Exhibit D-1.**

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 Contractor's primary limits to the minimum requirements herein.

15.1.3 Subcontractor

Developer shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part, the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of the Developer except where smaller minimum limits are permitted as set forth below.

15.1.4 Workers' Compensation and Employers' Liability Insurance

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

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

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

15.1.5 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance

15.1.5.1 Developer shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, 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.

15.1.7 Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates

15.1.7.1 Developer shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

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

15.1.7.2.1 A clause stating:

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

15.1.7.2.2 Language stating in particular those insured, extent of insurance, location and

operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

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

15.1.7.4 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Developer's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by the Developer and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Facilities Lease. Such insurance must have the 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.

15.1.8 Insurance Policy Limits

The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	$4,000,000
	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	$4,000,000
Automobile Liability – Any Auto	Combined Single Limit	$4,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$4,000,000
Pollution Liability		$1,000,000 per claim; $2,000,000 aggregate

The limits of insurance for those subcontractors whose scope of work does not exceed ten percent (10%) of the Guaranteed Maximum Cost shall not be less than the following amounts:

Commercial General Liability	Combined Single Limit	$2,000,000
	Product Liability and Completed Operations	$2,000,000
Automobile Liability - Any Auto	Combined Single Limit	$2,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$2,000,000

Notwithstanding anything in this Facilities Lease to the contrary, the above insurance requirements may be modified as appropriate for subcontractors, with District's prior written approval.

15.2 District's Insurance

15.2.1 Rental Interruption Insurance

District shall at all times from and after District's **acceptance** of the Project, for the benefit of District and Developer, as their interests may appear, maintain rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum

estimated Lease Payments payable under this Facilities Lease during the current or any future 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.

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.

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 Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations.

16.2 Developer shall also defend, at its own expense, Indemnitees with legal counsel reasonably acceptable to the District, against all suits, claims, allegations, damages, losses, and expenses, including but not limited

attorneys' fees and costs, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by Developer, its Subcontractors, vendors, or suppliers, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees. This defense obligation extends to any failure or alleged failure by Developer to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Developer's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations. This agreement and obligation of the Developer shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any party or person described herein.

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

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

16.5 The District may retain so much of the moneys due to the Developer as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until the District, Architect and Construction Manager have received written agreement from the Developer that Developer will unconditionally defend the District and its respective Board Members, officers, representatives, employees, consultants, the Architect and Construction 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

17.3.2 There shall be a partial abatement of any principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C as a result of the application of the net proceeds of any

eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C.

18. Damage and Destruction

If, following delivery of possession of all or a portion of the Project by Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** for the remainder of the original Term. Nothing in this section shall relieve District of its obligations, nor deny Developer of its rights under Section 15.2.

19. Abatement

19.1 If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E,** the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Developer have the right to demand, the Lease Payments as indicated in the Guaranteed Maximum Price Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time. Nothing in this section shall relieve District of its obligations, nor deny Developer of its rights under Section 15.2.

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

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

19.3.1 Repair the Project to full use.

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

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

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

20. Access

20.1 By Developer

Developer shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Developer may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Developer.

20.2 By District

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

21. Assignment, Subleasing

21.1 Assignment and Subleasing by the District

Any assignment or sublease by District shall be subject to all of the following conditions:

21.1.1 This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed 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. Termination, Default And Suspension

22.1 Termination; Lease Terminable Only As Set Forth Herein

22.1.1 Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any necessary payments pursuant to the Guaranteed Maximum Price Provisions in Exhibit C or any reduction thereof. The obligations hereunder of District shall not be otherwise affected by reason of any damage to or destruction of all or any part of the Project; the taking of the Project or any portion thereof by condemnation or otherwise; the prohibition, limitation or restriction of District's use of the Project; the interference with such use by any private person or contractor; the District's acquisition of the ownership of the Project (other than pursuant to an express provision of this Facilities Lease); any present or future law to the contrary notwithstanding. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C shall continue to be payable in all events, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

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

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

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

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

22.2.1.12 Developer or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Facilities Lease, including but not limited to a lapse in licensing or registration.

22.2.2 Notification of Termination

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

22.2.2.1.1 Unless, within fifteen (15) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Facilities Lease and the Site Lease shall cease and terminate.

22.2.2.1.2 If the failure stated in the notice cannot be corrected within fifteen (15) days after the service of notice, District may consent to an extension of time, provided Developer instituted and diligently pursued corrective action within the applicable fifteen (15)-day period and until the violation is corrected. Upon District determination, Developer shall not be entitled to receive any further payment until the entire Work is finished.

22.2.2.2 Upon Termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Facilities Lease only if Surety:

22.2.2.2.1 Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Facilities Lease; and

22.2.2.2.2 Commences performance of this Facilities Lease within three (3) days from date of serving of its notice to District.

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 upon the performance bond for all damages caused the District by reason of the Developer's failure to complete the Work under this Facilities Lease.

22.2.3.4 In the event that the District shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the District shall not be liable nor account to the Developer in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

22.2.3.5 In the event that the Site Lease and Facilities Lease are terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Developer or any impact or impairment of Developer's bonding capacity.

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

22.2.3.7 The District shall have the right (but shall have no obligation) to assume and/or assign to a replacement contractor or construction manager, or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Developer under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Facilities Lease. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Developer shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractors under Subcontracts or other obligations or commitments. Developer must include this assignment provision in all of its Facilities Leases with its Subcontractors.

22.2.3.8 All payments due the Developer hereunder shall be subject to a right of offset by the District for expenses,

damages, losses, costs, claims, or reimbursements 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 of time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.4.2 Remedies on District's Default

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

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

22.4.2.1.1 An amount determined by a mutually-agreed upon appraiser; or

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

22.4.2.2 District's obligation to make the payments required pursuant to the Guaranteed Maximum Price Provisions indicated in Exhibit C shall be:

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

22.4.2.2.2 Decreased by the amount of rent Developer receives in re-letting the Project Site.

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

by the District the right to re-rent the Project Site shall vest in Developer as indicated herein.

22.4.3 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 amount shall be full compensation for all Developer's and its Subcontractor(s)' changes in the cost of performance of the Facilities Lease caused by any such suspension, delay or interruption.

23. 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

If to Developer:

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

With a copy to:

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

With a copy to:

Quinlan S. Tom, Esq.
Wendel Rosen Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

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

24. Binding Effect

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

25. No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

26. Severability

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

27. Amendments, Changes and Modifications

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

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.

37. Time of the Essence

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

38. Force Majeure

A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing that 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 that non-performance will not be a default hereunder or a grounds for termination of this Facilities Lease.

39. Interpretation

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: 8/24, 2017

Oakland Unified School District

By: James Harris
President, Board of Education

Name: Kyra R. Johnson-Trammell

Title: Secretary, Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: Attorney at Law

Dated: 8-15, 2017

Vila Tulum Joint Ventures

By:

Name: Richard H. VILA

Title: President

Legal Description

In the City of Oakland, County of Alameda, State of California, described as follows:

Beginning a point in San Leandro Creek at the southwestern corner of Lot 4, as said lot is shown on the map accompanying the report of the Referees I Partition in the Action of John P Walker Vs Carmen Peralta Schwartz et al., in the Superior Court, Alameda County, State of California on September 10, 1896 and numbered on the register of said Court as No. 13006; and running thence along the western line of said Lot 4 north 11° 22′ east 48.74 to the southwestern line of Lot 25, as said lot is shown on the "Map of the Cunha and Walker Property, Brooklyn, Tp., Alameda County, California 1909" filed August 2, 1909 in Book 24 of Maps, page 90, in the Office of the County Recorder of Alameda County; thence along the last named line north 63° 07′ 30″ west 553.07 feet to the center line of 105th Avenue, formerly South Bartlett Avenue, as shown on said last mentioned map; thence along the last named line north 20° 54′ 30″ east 13.07, feet, to a line drawn parallel with the southwestern line of said lot 25, and distant at right angles 13 feet northeasterly therefrom; thence along said parallel line south 63° 07′ 30″ east 550 feet, more or less, to the western line of said Lot 4; thence along said parallel line north 11° 22′ east 742.90 feet to the southern line of the tract of land shown on the map of "Tract 711, Oakland, California , Oakland, Alameda County, California", filed July 18, 1945 in Book 11 of maps, pages 14 and 15 in the office of the County Recorder of Alameda County, and along the southern line of the parcel of land described in the deed

by Louis Gallino and Rina Gallino to Oakland School District of Alameda County, date April 4, 1945 in Book 4693 of Offic1al Records of Alameda County page 163, under Recorder's Series No. SS-22179 south 81° 25′ east 1123.57 feet to the western line of the tract of land shown on the map of"Tract720, City of Oakland, Alameda California " filed November 19, 1945 in Book 11 of Maps pages 36 and 37, in the office of the County Recorder of Alameda County; thence along the last named line south 8° 35′ west 814.71 feet, more or less, to a point in San Leandro Creek on the southern line of the 5 acre tract of land secondly described in the deed by John Frank and Maria Frank to Louis Gallino and Rina Gallino dated March 14, 1921 in Book 3076 of Deeds page 94, Alameda County Records; thence along the last named line and along the southern line of the 15 acre tract of land described in the deed by Louis P. Selby and David F. Selby to Louis Gallino and Rina Gallino dated February 1, 1924 recorded February 6, 1924 in Book 609 of Official Records, page 367 under Recorder's Series No. T-94289, as follows; north 84° 15′ west 338.58 feet, south 86° 30′ west 251.16, south 80° west 217.80 feet, north 53° west 314.82 and north 82° 45′ west 92.40 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof described as follows:
Beginning at a point in San Leandro Creek at the intersection of the western line of the tract of land sown on the map of "Tract 720, City of Oakland, Alameda County, California" filed November 19, 1945 in Book 11 of Maps, pages 36 and 37 in the office of the County Recorder of Alameda County, with the southern line of the 5 acre tract secondly described in the deed by John frank and Marie Frank to Louis Gallino and Rina Gallino dated March 14, 1921, recorded 15, 1921 in Book 3076 of Deeds, page 94, Alameda County Records; running thence the southerly line of said tract of land described in the deed by Louis P. Selby and David F. Selby to Louis Gallino and Rina Gallino dated February 1, 1924 and recorded February 6, 1924 in Book 609 of Official Records of Alameda County, at page 367, under Recorders Series No. T-94289, as follows: north 84° 15′ west 338.58 feet, and south 86° 30′ west 83.68 feet; thence north 8° 35′ east 282.81 feet; thence south 81° 25′ east 420 feet, more or less to the western line of said "Tract 720"; thence along the last named line south 8° 35′ west 248.52 feet, more or less to the point of beginning.

ALSO EXCEPTING THEREFROM: Parcels A and B described in the Quitclaim Deed to Alameda County Flood Control and Water Conservation District recorded April 8, 1980.

Being Assessor's Parcel Nos. 45-5369-10 and 45-5320-1-4

EXHIBIT B

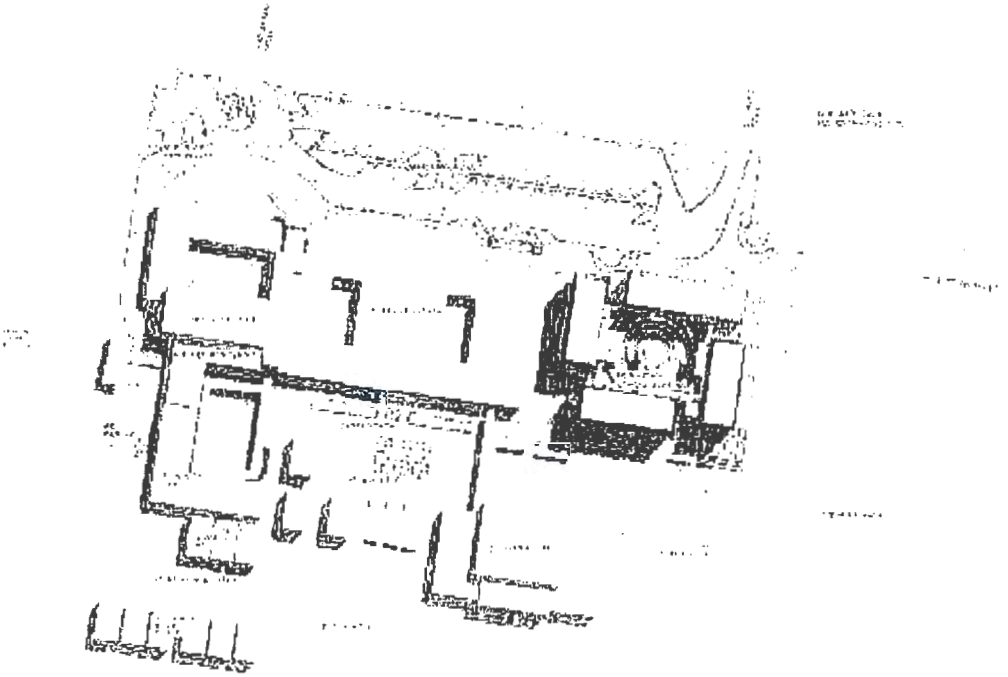
DESCRIPTION OF PROJECT SITE

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

Figure 2: Project Site and Surroundings

Source: GoogleEarth, as annotated by Lamphier-Gregory.

Figure 3: Site Plan



Source: Byrens Kim Design Works, dated July 6, 2015

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 Developer-Performed Work

Costs incurred by the Developer for self-performed work at the direction of District or with the District's prior approval, as follows:

2.1.3.1 Actual costs to the Developer of wages of construction workers, excluding all salaried and/or administrative personnel, directly employed by the Developer to perform the construction of the Work at the site.

2.1.3.2 Wages or salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs, and pension plans of the Developer's field supervisory, safety and administrative personnel when stationed at the site or stationed at the Developer's principal office, only for that portion of their time required for the Work.

2.1.3.3 Wages and salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs and pension plans of the Developer's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

2.1.3.4 Costs paid or incurred by Developer for taxes, insurance, contributions, assessments required by law or collective bargaining agreements and for personnel not covered by such agreements, and for customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 2.1.3.1 through 2.1.3.3.

2.1.3.5 Costs, including transportation and storage, of materials and equipment incorporated in the completed construction, including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the District's property at the completion of the Work or, at the District's option, shall be sold by the Developer. Any amounts realized from such sales shall be credited to the District as a deduction from the Cost of the Work.

2.1.3.6 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, machinery and equipment not customarily owned by construction workers, that are provided by the Developer at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Developer. Cost for items previously used by the Developer shall mean fair market value.

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
Lime treatment for soils	TBD
Off hauling of soils	TBD
Unforeseen conditions	$450,000.00
Total Allowance Amount	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.

2.1.5 Alternates.

During Developer's performance of the Work, the District may elect to add any such Alternate Bid Item(s) if not included in the Contract at the time of award. If the District elects to add Alternate Bid Item(s) after Contract award, the cost or credit for such Alternate Bid Item(s) shall be as set forth below unless the parties agree to a different price and the Contract Time shall be adjusted by the number of days allocated in the Contract Documents. If days are not allocated in the Contract Documents, the Contract Time shall be equitably adjusted.

Task/Work	**Alternates Amount**
1. Replace Nichia siding with HardiePlank or stucco.	$TBD
2. Remove solar panel installation and electrical installation.	$TBD
3. Remove reclaimed water system.	$TBD
4. Remove sunshades exterior metal panels.	$TBD
5. Remove west parking lot.	$TBD
6. Reduced replacement of area paving and seal coat in lieu of replacement.	$TBD
7. Reduce number of concrete colors and simplify concrete patterns.	$TBD
8. Value engineer light fixture package.	$TBD
9. Value engineer HVAC package.	$TBD
10. Value engineer elevator.	$TBD
Total Alternates Amount	$TBD

2.1.6 Miscellaneous Costs

2.1.6.1 Where not included in the General Conditions, and with the prior approval of District, costs of document reproductions (photocopying and blueprinting expenses), long distance telephone call charges, postage, overnight and parcel delivery charges, telephone costs including cellular telephone charges, facsimile or other communication service at the Project site, job photos and progress schedules, and reasonable petty cash expenses of the site office. Developer shall consult with District to determine whether District has any vendor relationships that could reduce the cost of these items and use such vendors whenever possible.

2.1.6.2 Sales, use, gross receipts, local business and similar taxes imposed by a governmental authority that are related to the Work.

2.1.6.3 Fees and assessments for permits, plan checks, licenses and inspections for which Developer is required by the Contract Documents to pay including, but not limited to, permanent utility connection charges, street use permit, street use rental, OSHA permit and sidewalk use permit and fees.

2.1.6.4 Fees of laboratories for tests required by the Contract Documents.

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.

2.1.8 Developer's Fee

Six percent (6.0%) of the Cost of the Work as described in Section 2.1.

2.1.9 Bonds and Insurance

For insurance and bonds required under this Facilities Lease (exclusive of those required by Subcontractors, which costs are included in the subcontract amounts), that portion of insurance and bond premiums which are directly attributable to this Contract, which shall be calculated at a rate of two and five hundred thirty six millionths percent (2.0536%) of the Cost of the Work for insurance and payment and performance bonds.

2.1.10 Contingency

2.1.10.1 The Guaranteed Maximum Price includes a Developer Contingency of Six hundred and thirty thousand and 00/100 Dollars, ($630,000.00), for potential additional construction costs for District requested changes, and/or scope gaps between the subcontract categories of the Work.

2.1.10.2 The Developer Contingency is not intended for such things as scope changes.

2.1.10.3 The Contingency shall not be used without the agreement of the District.

2.1.10.4 The unused portion of the Developer Contingency shall be considered as cost savings and retained by the District at the end of the Project.

2.2 The Guaranteed Maximum Price will consist of the amounts to be identified in **Attachment 2** to this **Exhibit C**. Except as indicated herein for modifications to the Project approved by the District, Developer will not seek additional compensation from District in excess of Guaranteed Maximum Price. District shall pay the Guaranteed Maximum Price to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

2.3 Total Payment

In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments ever exceed the Guaranteed Maximum Price to be determined, and as may be modified pursuant to **Exhibit D** to the Facilities Lease.

2.4 Changes to Guaranteed Maximum Price

2.4.1 The Parties acknowledge that the Guaranteed Maximum Price is based on the Construction Documents, including the plans and specifications, as identified in **Exhibit D** to the Facilities Lease.

2.4.2 As indicated in the Facilities Lease, the Parties may add to or remove from the project specific scopes of work. Based on these change(s), the 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**.

4.1 The Lease Payments shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in monthly installments as indicated in the Schedule of Lease Payments attached hereto as **Attachment 3** for the duration of the lease term of one (1) year, with the first Lease Payment due ninety (90) days after execution of the Memorandum of Commencement Date.

4.2 The District represents that the annual Lease Payment obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Facilities Lease.

4.3 Fair Rental Value

District and Developer have agreed and determined that the total Lease Payments constitute adequate consideration for the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.4 Each Lease Payment Constitutes a Current Expense of the District

4.4.1 The District and Developer understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.4.2 Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.4.3 The District covenants to take all necessary actions to include the Lease Payments in each of its final approved annual budgets.

4.4.4 The District further covenants to make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments that come due and payable during the period covered by each such budget. Developer acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as 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 1

GENERAL CONDITIONS COSTS

VILA GENERAL CONDITIONS FOR
OUSD MADISON ACADEMY

14 MONTHS

START UP COSTS				
MOVE TRAILER ON/OFF	4	$950	$3,800	
SET UP TRAILER/TAKE DOWN	4	$950	$3,800	
TEMPORARY POWER SET UP	2	$5,000	$10,000	
SIGNAGE	2	$2,500	$5,000	
TELEPHONE HOOKUP	2	$650	$1,300	
COMMUNICATION EQUIPMENT	2	$1,500	$3,000	
OFFICE FURNISHINGS	2	$6,500	$13,000	
TEMPORARY FENCING	0	$0	$0	
TEMPORARY LIGHTING	0	$0	$0	
MONTHLY COSTS				
PG&E	14	$300	$4,200	
PRINTER	14	$750	$10,500	
CELL PHONES	14	$350	$4,900	
WATER	14	$90	$1,260	
TRAILER	14	$900	$12,600	
STORAGE CONTAINER	14	$110	$1,540	
CHEMICAL TOILETS/SINK	14	$950	$13,300	
OFFICE SUPPLIES	14	$85	$1,190	
PHOTOS/VIDEO	14	$500	$7,000	
FUEL	14	$975	$13,650	
VEHICLE	14	$975	$13,650	
PER JOB COSTS				
JOB ESTIMATE	1	$3,500	$3,500	
PROJECT EXECUTIVE	448	$175	$78,400	32hr/month
PROJECT ACCOUNTANT	560	$75	$42,000	40hr/month
PROJECT MANAGEMENT	1920	$125	$240,000	32hr/week
SUPERVISION	2400	$107	$256,800	full time
SUPERVISION O.T.	144	$140	$20,160	18 saturdays
FOREMAN	1008	$98	$98,784	6 months
LABORER	2400	$75	$180,000	full time
PROJECT ADMINISTRATOR	504	$45	$22,680	3 months
PROJECT ENGINEER	2400	$65	$156,000	full time
SMALL TOOL ALLOWANCE	14	$650	$9,100	
CONTRACTORS EQUIPMENT	7	$3,400	$23,800	7wk/misc rental
JANITORIAL sf	0	$0.00	$0	
DUMP FEES	35	$850	$29,750	
TAXES & LICENSE	0	$0	$0	
SCHEDULING	1	$21,000	$21,000	
PERMITS & FEES	0	$0	$0	
EQUIPMENT RENTALS	0	$0	$0	
TESTING	0	$0	$0	
LEED	0	$0	$0	
SAFETY PROGRAM	560	$150	$84,000	
PARKING FEES	0	$0	$0	
STAFF TRAINING	40	$305	$12,200	
CLOSEOUT DOCUMENTATION	1	$4,600	$4,600	
PREP TIME W SUPERINTENDENT	160	$107	$17,120	
		Vila Total	$1,423,584	
		Tulum Total	$731,500	
		JV Total	$2,155,084	
		Per Month	$179,590	
		% of $20mil	10.78%	

ATTACHMENT 2

GUARANTEED MAXIMUM PRICE

To be attached.

ATTACHMENT 3

SCHEDULE OF LEASE PAYMENTS

Amortization Schedule

Loan Amount:	$540,000.00
Interest:	4.5% Annual
Term in Months	12.00
Payment Frequency	Monthly

Payment #	Total Payment	Principal Payment	Interest Payment	Balance
				$540,000.00
1	$46,104.40	$44,079.40	$2,025.00	$495,920.60
2	$46,104.40	$44,244.70	$1,859.70	$451,675.90
3	$46,104.40	$44,410.62	$1,693.78	$407,265.28
4	$46,104.40	$44,577.16	$1,527.24	$362,688.13
5	$46,104.40	$44,744.32	$1,360.08	$317,943.80
6	$46,104.40	$44,912.11	$1,192.29	$273,031.69
7	$46,104.40	$45,080.53	$1,023.87	$227,951.16
8	$46,104.40	$45,249.58	$854.82	$182,701.57
9	$46,104.40	$45,419.27	$685.13	$137,282.30
10	$46,104.40	$45,589.59	$514.81	$91,692.71
11	$46,104.40	$45,760.55	$343.85	$45,932.16
12	$46,104.40	$45,932.16	$172.25	$0.00
Totals	**$553,252.80**	**$540,000.00**	**$13,252.82**	

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS FOR THE FOLLOWING PROJECT:

MADISON PARK ACADEMY EXPANSION PROJECT

BY AND BETWEEN

OAKLAND UNIFIED SCHOOL DISTRICT

AND

VILA TULUM JOINT VENTURES

Dated as of August 24, 2017

TABLE OF CONTENTS

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.

1.1.10 Construction Schedule. The progress schedule of construction of the Project as provided by Developer and approved by District.

1.1.11 Contract. The agreement between the District and Developer contained in the Contract Documents.

1.1.12 Contract Documents. The Contract Documents consist exclusively of the documents evidencing the agreement of the District and Developer. The Contract Documents consist of the following documents:

1.1.12.1 Non-Collusion Declaration

1.1.12.2 Site Lease

1.1.12.3 Facilities Lease, including Exhibits A- J

1.1.12.3.1 Performance Bond

1.1.12.3.2 Payment Bond (Developer's Labor & Material Bond)

1.1.12.3.3 [Reserved]

1.1.12.3.4 Hazardous Materials Procedures and Requirements

1.1.12.3.5 Workers' Compensation Certification

1.1.12.3.6 Prevailing Wage Certification

1.1.12.3.7 Disabled Veterans Business Enterprise Participation Certification (if applicable)

1.1.12.3.8 Drug-Free Workplace Certification

1.1.12.3.9 Tobacco-Free Environment Certification

1.1.12.3.10 Hazardous Materials Certification

1.1.12.3.11 Lead-Based Materials Certification (if applicable)

1.1.12.3.12 Imported Materials Certification (if applicable)

1.1.12.3.13 Criminal Background Investigation/Fingerprinting Certification

1.1.12.3.14 Roofing Project Certification

1.1.12.3.15 Iran Contracting Act Certification

1.1.12.3.16 Skilled and Trained Workforce Certification

1.1.12.3.17 Escrow Agreement for Security Deposits in Lieu of Retention (if used)

1.1.12.3.18 Agreement and Release of Any and All Claims

1.1.12.4 All Plans, Technical Specifications, and Drawings

1.1.12.5 Any and all addenda to any of the above documents

1.1.12.6 Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.13Contract Time. The time period stated in the Facilities Lease for the completion of the Work.

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.

1.1.24 Guaranteed Maximum Price. The total monies payable to the Developer under the terms and conditions of the Contract Documents.

1.1.25 Job Cost Reports: Any and all reports or records detailing the costs associated with work performed on or related to the Project that Developer shall maintain for the Project. Specifically, Job Cost Reports shall contain, but are not limited by or to, the following information: a description of the work performed or to be performed on the Project; quantity, if applicable, of work performed (hours, square feet, cubic yards, pounds, etc.) for the Project; Project budget; costs for the Project to date; estimated costs to complete the Project; and expected costs at completion. The Job Cost Reports shall also reflect all Contract cost codes, change orders, elements of non-conforming work, back charges, and additional services.

1.1.26 Labor Commissioner's Office (or "Labor Commissioner"). Also known as the Division of Labor Standards Enforcement ("DLSE"): Division of the DIR responsible for adjudicating wage claims, investigating discrimination and public works complaints, and enforcing Labor Code statutes and Industrial Welfare Commission orders.

1.1.27 Material Safety Data Sheets (or "MSDS"). A form with data regarding the properties for potentially harmful substances handled in the workplace.

1.1.28 Municipal Separate Storm Sewer System (or "MS4"). 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.

1.1.29 Plans: See **Drawings**.

1.1.30 Premises. The real property on which the Site is located.

1.1.31 Product(s). New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the District for reuse.

1.1.32 Product Data. Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Developer to illustrate a material, product, or system for some portion of the Work.

1.1.33 Project. The planned undertaking as provided for in the Contract Documents.

1.1.34 Project Inspector (or "Inspector"). The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

1.1.35 Project Labor Agreement (or "PLA"): a prehire collective bargaining agreement in accordance with Public Contract Code section 2500 *et seq*. that establishes terms and conditions of employment for a specific

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

accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

1.1.46 Shop Drawings. All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the Developer, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.

1.1.47 Site. The Project site as shown on the Drawings.

1.1.48 Specifications. That portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

1.1.49 State. The State of California.

1.1.50 Storm Water Pollution Prevention Plan (or "SWPPP"). A document which identifies sources and activities at a particular facility that may contribute pollutants to storm water and contains specific control measures and time frames to prevent or treat such pollutants.

1.1.51 Subcontractor. A contractor and/or supplier who is under contract with the Developer or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

1.1.52 Submittal Schedule. The schedule of submittals as provided by Developer and approved by District.

1.1.53 Surety. The person, firm, or corporation that executes as surety the Developer's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

1.1.54 Work. All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

1.2 Laws Concerning the Contract Documents

The Contract is subject to all provisions of the Constitution and laws of California and the United States governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

1.3 No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract Documents, shall affect or modify any of

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

acquiescence on any breach thereunder, except as may be specifically agreed in writing.

1.7 Substitutions For Specified Items

Developer shall not substitute different items for any items identified in the Contract Documents without prior written approval of the District, unless otherwise provided in the Contract Documents.

1.8 Materials and Work

1.8.1 Except as otherwise specifically stated in the Contract Documents, Developer shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Work, in a good and workmanlike manner, within the Contract Time.

1.8.2 Unless otherwise specified, all materials shall be new and of the best quality of their respective kinds and grades as noted or specified, and workmanship shall be of high quality, and Developer shall use all diligence to inform itself fully as to the required manufacturer's instructions and to comply therewith.

1.8.3 Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected from the elements, theft, vandalism, or other loss or damage as required.

1.8.4 For all materials and equipment specified or indicated in the Drawings and Specifications, the Developer shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

1.8.5 Developer shall, after award of the Project by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Developer shall, upon demand from District, present documentary evidence showing that orders have been placed.

1.8.6 In the event of Developer's neglect in complying or failure to comply with the above instructions, District reserves the right, but has no obligation, to place orders for such materials and/or equipment as the District may deem advisable so that the Work may be completed by the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Developer or deducted from payment(s) to Developer.

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.

3.3 Architect shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

3.4 Developer shall provide District and the Construction Manager with a copy of all written communication between Developer and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and change order requests.

4. Construction Manager

4.1 If a Construction Manager is used on this Project ("Construction Manager" or "CM"), the Construction Manager will provide administration of the Contract Documents on the District's behalf. After execution of the Contract Documents, all correspondence and/or instructions from Developer and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Developer's responsibility.

4.2 The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the Architect, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager in good faith, shall not give rise to any duty or responsibility of the Construction Manager to: the Developer, any Subcontractor, or their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

4.3 If the District does not use a Construction Manager on this Project, all references to Construction Manager or CM shall be read as District.

5. Inspector, Inspections, and Tests

5.1 Project Inspector

5.1.1 One or more Project Inspector(s), including special Project Inspector(s), as required, will be assigned to the Work by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the building code and monitor compliance with Plans and Specifications for the Project previously approved by the DSA. Duties of Project Inspector(s) are specifically defined in section 4-342 of said part 1 of title 24.

5.1.2 No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Developer shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials, including, but not limited to, submission of form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector at least 48 hours in advance of the commencement and completion of construction of

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

Developer and may be invoiced to the Developer by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. Developer

Developer shall construct and complete, in a good and workmanlike manner, the Work for the Guaranteed Maximum Price including any adjustment(s) to the Guaranteed Maximum Price pursuant to provisions herein regarding changes to the Guaranteed Maximum Price. Except as otherwise noted, Developer shall provide and pay for all labor, materials, equipment, permits (excluding DSA), fees, licenses, facilities, transportation, taxes, bonds and insurance, and services necessary for the proper execution and completion of the Work, except as indicated herein.

6.1 Status of Developer

6.1.1 Developer is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Developer or any of Developer's Subcontractors, agents or employees. Developer assumes exclusively the responsibility for the acts of its agents and employees as they relate to the services to be provided during the course and scope of their employment. Developer, its Subcontractors, and its agents and employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Developer's activities to determine compliance with the terms of the Contract Documents.

6.1.2 As required by law, Developer and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827 (Post Office Box 26000, Sacramento, California 95826), http://www.cslb.ca.gov.

6.1.3 As required by law, Developer and all Subcontractors shall be properly registered as public works contractors by the Department of Industrial Relations at https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm or current URL.

6.1.4 Developer represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Work required under this Contract and that no person having any such interest shall be employed by Developer.

6.2 Project Inspection Card(s)

Developer shall verify that forms DSA 152 (or most current version applicable at the time the Work is performed) are issued for the Project prior to the commencement of construction.

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

Manager, or the Project Inspector to review the information on the badges upon request.

6.3.5.3 Continued failure to display identification badges as required by this policy may result in the individual being removed from the Project or assessment of fines against the contractor.

6.4 Duty to Provide Fit Workers

6.4.1 Developer and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of Developer to ensure compliance with this requirement. District may require Developer to permanently remove unfit persons from Project Site.

6.4.2 Any person in the employ of Developer or Subcontractor(s) whom District may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of District.

6.4.3 The Developer shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

6.4.4 If Developer intends to make any change in the name or legal nature of the Developer's entity, Developer shall first notify the District in writing prior to making any contemplated change. The District shall determine in writing if Developer's intended change is permissible while performing the Work.

6.5 Field Office

6.5.1 Developer shall provide on the Work Site a temporary office.

6.6 Purchase of Materials and Equipment

The Developer is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

6.7 Documents on Work

6.7.1 Developer shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and Titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Developer shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the

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.

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 projections related to estimating, negotiating, pricing, or performing the Work or

modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Developer shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Facilities Lease. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.9 Integration of Work

6.9.1 Developer shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District and/or Architect may direct.

6.9.2 Developer shall make its own layout of lines and elevations and shall be responsible for the accuracy of both Developer's and Subcontractors' work resulting therefrom.

6.9.3 Developer and all Subcontractors shall take all field dimensions required in performance of the Work, and shall verify all dimensions and conditions on the Site. All dimensions affecting proper fabrication and installation of all Work must be verified prior to fabrication by taking field measurements of the true conditions. If there are any discrepancies between dimensions in drawings and existing conditions which will affect the Work, Developer shall bring such discrepancies to the attention of the District and Architect for adjustment before proceeding with the Work.

6.9.4 All costs caused by noncompliant, defective, or delayed Work shall be borne by Developer, inclusive of repair work.

6.9.5 Developer shall not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of District.

6.10 Notifications

6.10.1 Developer shall notify the Architect and Project Inspector, in writing, of the commencement of construction of each and every aspect of the Work at least 48 hours in advance by submitting form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector. Forms are available on the DSA's website at: http://www.dgs.ca.gov/dsa/Forms.aspx.

6.10.2 Developer shall notify the Architect and Project Inspector, in writing, of the completion of construction of each and every aspect of the Work at least 48 hours in advance by submitting form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector.

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 approve use 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

6.13.1.2 National Board of Fire Underwriters' Regulations

6.13.1.3 Uniform Building Code, latest addition, and the California Code of Regulations, title 24, and other amendments

6.13.1.4 Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

6.13.1.5 Industrial Accident Commission's Safety Orders, State of California

6.13.1.6 Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes

6.13.1.7 Americans with Disabilities Act

6.13.1.8 Education Code of the State of California

6.13.1.9 Government Code of the State of California

6.13.1.10 Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies

6.13.1.11 Public Contract Code of the State of California

6.13.1.12 California Art Preservation Act

6.13.1.13 U. S. Copyright Act

6.13.1.14 U. S. Visual Artists Rights Act

6.13.2 Developer shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.).

6.13.3 If Developer performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Developer shall bear all costs arising therefrom and arising from the correction of said Work.

6.13.4 Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Developer shall use its best efforts to satisfy the requirements of such bodies or agencies applicable at the time the Work is performed, and as determined by those bodies or agencies.

6.14 Safety/Protection of Persons and Property

6.14.1 The Developer will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

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.

6.14.11 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.

6.14.12 In an emergency affecting safety of life or of work or of adjoining property, Developer, without special instruction or authorization, shall act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Developer on account of emergency work shall be determined by agreement.

6.14.13 All salvage materials will become the property of the Developer and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the District reserves the right to designate certain items of value that shall be turned over to the District unless otherwise directed by District.

6.14.14 All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

6.14.15 Developer shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.

6.14.16 The Developer shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxings, or other construction as required by the Architect. The Developer shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the Developer shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the District and others.

6.14.17 Developer shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

6.14.18 Developer shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Developer shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

6.14.19 Developer, Developer's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior

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.

6.15.3 At no additional cost to the District, Developer shall provide a Qualified Storm Water Practitioner who shall be onsite and implement and monitor any and all SWPPP requirements applicable to the Project, including but not limited to:

6.15.3.1 At least forty eight (48) hours prior to a forecasted rain event, implementing the Rain Event Action Plan (REAP) for any rain event requiring implementation of the REAP, including any erosion and sediment control measures needed to protect all exposed portions of the site; and

6.15.3.2 Monitoring any Numeric Action Levels (NALs), if applicable.

6.16 Working Evenings and Weekends

Developer may be required to work increased hours, evenings, and/or weekends at no additional cost to the District. Developer shall give the District seventy-two (72) hours' notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any increased or additional Inspector charges as a result of the Developer's increased hours, or evening and/or weekend work.

6.17 Cleaning Up

6.17.1 The Developer shall provide all services, labor, materials, and equipment necessary for protecting and securing the Work, all school occupants, furnishings, equipment, and building structure from damage until its completion and final acceptance by District. Dust barriers shall be provided to isolate dust and dirt from construction operations. At completion of the Work and portions thereof, Developer shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Developer must erect the necessary warning signs and barricades to ensure the safety of all school occupants. The Developer at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

6.17.2 Developer at all times shall keep Premises, including property immediately adjacent thereto, free from debris such as waste, rubbish (including personal rubbish of workers, e.g., food wrappers, etc.), and excess materials and equipment caused by the Work. Developer shall not leave debris under, in, or about the Premises (or surrounding property or neighborhood), but shall promptly remove same from the Premises on a daily basis. If Developer fails to clean up, District may do so and the cost thereof shall be charged to Developer. If the Contract calls for Work on an existing facility, Developer shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Developer shall comply with all related provisions of the Specifications.

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 If the Contract is valued at $1 million or more and plans to use state bond funds, then 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.

7.6.2 Developer is responsible for ensuring that all Subcontractors are properly registered as public works contractors by the Department of Industrial Relations.

7.7 Developer is solely responsible for settling any differences between the Developer and its Subcontractor(s) or between Subcontractors.

7.8 Developer must include in all of its subcontracts the assignment provisions indicated in the Termination section of these Construction Provisions.

8. Other Contracts/Contractors

8.1 District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Developer shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Developer's Work with the work of other contractors.

8.2 Developer shall protect the work of any other contractor that Developer encounters while working on the Project.

8.3 If any part of Developer's Work depends for proper execution or results upon work of District or any other contractor, the Developer shall visually inspect, and with reasonable effort, physically inspect all accessible portions of District's or any other contractor's work and, before proceeding with its Work, promptly report to the District in writing any defects in District's or any other contractor's work that render Developer's Work unsuitable for proper execution and results. Developer shall be held accountable for damages to District for District's or any other contractor's work that Developer failed to inspect or should have inspected. Developer's failure to inspect and report shall constitute Developer's acceptance of all District's or any other contractor's work as fit and proper for reception of Developer's Work, except as to defects that may develop in District's or any other contractor's work after execution of Developer's Work and not caused by execution of Developer's Work.

8.4 To ensure proper execution of its subsequent Work, Developer shall measure and inspect Work already in place and shall at once report to the District in writing any discrepancy between that executed Work and the Contract Documents.

8.5 Developer shall ascertain to its own satisfaction the scope of the Project and nature of District's or any other contracts that have been or may be awarded by District in prosecution of the Project to the end that Developer may perform under the Contract in light of the other contracts, if any.

8.6 Nothing herein contained shall be interpreted as granting to Developer exclusive occupancy of the Site, the Premises, or of the Project. Developer shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Developer's obligations under the Contract Documents, Developer shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the District of the resolution.

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

referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract Documents within the limits specified.

9.9 As required by Section 4-317(c), Part 1, Title 24, CCR: "Should any existing conditions such as deterioration or non-complying construction be discovered which is not covered by the DSA-approved documents wherein the finished work will not comply with Title 24, California Code of Regulations, a construction change document, or a separate set of plans and specifications, detailing and specifying the required repair work shall be submitted to and approved by DSA before proceeding with the repair work."

9.10 Ownership of Drawings

All copies of Plans, Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District, are the property of District. They are not to be used by Developer in other work and, with the exception of signed sets of Contract Documents, are to be returned to District on request at completion of Work, or may be used by District as it may require without any additional costs to District. Neither the Developer nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. District hereby grants the Developer, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. Developer's Submittals and Schedules

Developer's submittals shall comply with the provisions and requirements of the Specifications including, without limitation Submittals.

10.1 Schedule of Work, Schedule of Submittals, and Schedule of Values.

10.1.1 The Developer shall comply with the construction schedule attached to the Facilities Lease as Exhibit F ("Construction Schedule"). [To be attached when available.]

10.1.2 Developer must provide all schedules both in hard copy and electronically, in a format (e.g. Microsoft Project or Primavera) approved in advance by the District.

10.1.3 The District will review the schedules submitted and the Developer shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.1.4 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.

10.1.5 All submittals and schedules must be approved by the District before Developer can rely on them as a basis for payment.

10.1.6 Within TEN (10) calendar days after the date of the issuance of the Notice to Proceed for 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

10.1.6.2.1.13 Testing

10.1.6.2.1.14 Punch list and acceptance

10.1.6.2.2 And also divided by each of the following areas:

10.1.6.2.2.1 Site work

10.1.6.2.2.2 By each building

10.1.6.2.2.3 By each floor

10.1.6.2.3 The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:

10.1.6.2.3.1 Mobilization and layout combined to equal not more than 1%.

10.1.6.2.3.2 Submittals, samples and shop drawings combined to equal not more than 3%.

10.1.6.2.3.3 Bonds and insurance combined to equal not more than 2%.

10.1.6.2.4 Closeout documentation shall have a value in the preliminary schedule of not less than 3%.

10.1.6.2.5 Notwithstanding any provision of the Contract Documents to the contrary, payment of the Developer's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

10.1.6.2.6 Developer shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in preparing Developer's bid. The preliminary schedule of values shall be subject to the District's review and approval of the form and content thereof. In the event that the District objects to any portion of the preliminary schedule of values, the District shall notify the Developer, in writing, of the District's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the District's written objection(s), Developer shall submit a revised preliminary schedule of values to the District for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the District has approved the entirety of the preliminary schedule of values.

10.1.6.2.7 Once the preliminary schedule of values is approved by the District, this shall become the Schedule of

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 for 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 Subcontractor List

The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value

of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

10.2 Monthly Progress Schedule(s)

10.2.1 Developer shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be sent as noted below and, if also requested by District, within the timeframe requested by the District and shall be in a format acceptable to the District and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

10.2.2 Developer shall submit Monthly Progress Schedule(s) with all payment applications.

10.2.3 Developer must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the District.

10.2.4 District will review the schedules submitted and Developer shall make changes and corrections in the schedules as requested by the District and resubmit the schedules until approved by the District.

10.2.5 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.

10.2.6 All submittals and schedules must be approved by the District before Developer can rely on them as a basis for payment.

10.3 Material Safety Data Sheets (MSDS)

Developer is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the federal "Hazard Communication" standard, or employees' "right to know" law. The Developer is also required to ensure proper labeling on substances brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the District.

11. Site Access, Conditions, And Requirements

11.1 Site Investigation

Developer has made a careful investigation of the Site and is familiar with the requirements of the Contract Documents and has accepted the readily observable, existing conditions of the Site.

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.

11.7 Surveys

Developer shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

11.8 Regional Notification Center

The Developer, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Developer unless an inquiry identification number has been assigned to the Developer or any Subcontractor and the Developer has given the District the identification number. Any damages arising from Developer's failure to make appropriate notification shall be at the sole risk and expense of the Developer. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Developer and shall not be considered for an extension of the Contract Time.

11.9 Existing Utility Lines

11.9.1 Pursuant to Government Code section 4215, District assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under the Contract Documents with respect to any such utility facilities that are not identified in the Plans and Specifications. Developer shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.9.2 Locations of existing utilities provided by District shall not be considered exact, but approximate within a reasonable margin and shall not relieve Developer of its responsibilities to exercise reasonable care and to pay all costs of repair due to Developer's failure to do so. District shall compensate Developer for the costs of locating, repairing damage not due to the failure of Developer to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

11.9.3 No provision herein shall be construed to preclude assessment against Developer for any other delays in completion of the Work. Nothing in this Article shall be deemed to require District to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site of the construction Project can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site of the construction.

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.

12.4 No Excavation without Permits

The Developer shall not commence any excavation Work until it has secured all necessary permits including the required CalOSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

12.5 Discovery of Hazardous Waste and/or Unusual Conditions

12.5.1 Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Developer shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

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

12.5.1.2 Subsurface or latent physical conditions at the Site differing from those indicated.

12.5.1.3 Unknown physical conditions at the Project Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

12.5.2 The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Developer's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

12.5.3 In the event that a dispute arises between District and the Developer whether the conditions materially differ or cause a decrease or increase in the Developer's cost of, or time required for, performance of any part of the Work, the Developer shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Developer shall retain any and all rights provided either by the Contract Documents or by law that pertain to the resolution of disputes and protests.

13. Insurance and Bonds

13.1 Developer's Insurance

The Developer shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2 Contract Security – Bonds

13.2.1 Developer shall furnish two surety bonds issued by a California admitted surety insurer as follows:

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.

14.1.5 If any work is not in compliance with the Drawings and Specifications and if in the opinion of District said defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required above. If Developer or Surety cannot be contacted or neither complies with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the District believes are necessary. The costs of correction or attention shall be charged against Developer and Surety of the guarantees or warranties provided in this Article or elsewhere in this Agreement.

14.1.6 The above provisions do not in any way limit the guarantees or warranties on any items for which a longer guarantee or warranty is specified or on any items for which a manufacturer gives a guarantee or warranty for a longer period. Developer shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District.

14.1.7 Nothing herein shall limit any other rights or remedies available to District.

14.2 Indemnity

Developer shall indemnify the District as indicated in the Facilities Lease.

15. Time

15.1 Notice to Proceed

15.1.1 District may issue a Notice to Proceed for Construction within ninety (90) days from the date of the Notice of Award. Once Developer has received the Notice to Proceed for Construction, Developer shall complete the Work within the period of time indicated in the Contract Documents.

15.1.2 In the event that the District desires to postpone issuing the Notice to Proceed for Construction beyond ninety (90) days from the date of the Notice of Award, it is expressly understood that with reasonable notice to the Developer, the District may postpone issuing the Notice to Proceed for Construction. It is further expressly understood by Developer that Developer shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed for Construction.

15.1.3 If the Developer believes that a postponement of issuance of the Notice to Proceed for Construction will cause a hardship to Developer, Developer may terminate the Contract. Developer's termination due to a postponement shall be by written notice to District within ten (10) days after receipt by Developer of District's notice of postponement. It is further understood by Developer that in the event that Developer terminates the Contract as a result of postponement by the District, the District shall only be 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

Developer and Subcontractors shall continuously furnish sufficient and competent work forces with the required levels of familiarity with the Project and skill, training and experience to ensure the prosecution of the Work in accordance with the Construction Schedule.

15.3.2 Performance During Working Hours

Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the District and approval of any required governmental agencies.

15.3.3 No Work during State 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. The District or District's Representative will provide Developer with a schedule of test dates concurrent with the District's issuance of the Notice to Proceed for Construction, or as soon as test dates are made available to the District.

15.4 Progress and Completion

15.4.1 Time of the Essence

Time limits stated in the Contract Documents are of the essence to the Contract Documents. By executing the Facilities Lease, the Developer confirms that the Contract Time is a reasonable period for performing the Work.

15.4.2 No Commencement Without Insurance or Bonds

The Developer shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance or bonds. If Developer commences Work without insurance and bonds, all Work is performed at Developer's peril and shall not be compensable until and unless Developer secures bonds and insurance pursuant to the terms of the Contract Documents and subject to District claim for damages.

15.5 Schedule

Developer shall provide to District, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in these Construction Provisions.

15.6 Expeditious Completion

The Developer shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

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.

16.2.3.2 Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. In particular, Developer must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Schedule Analysis"). Such Schedule Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule. (This information must be provided for any portion of any delay of seven (7) days or more.)

16.2.3.3 A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay.

16.3 No Additional Compensation for Delays within Developer's Control

16.3.1 Developer is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Developer-prepared drawings or approve a proposed installation. Accordingly, Developer has included in the Guaranteed Maximum Price, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies, including without limitation delays due to California Environmental Quality Act ("CEQA") compliance. Thus, Developer is not entitled to make a claim for damages for delays arising from the review of Developer's drawings.

16.3.1.1 Developer shall only be entitled to compensation for delay when all of the following conditions are met:

16.3.1.1.1 The District is responsible for the delay.

16.3.1.1.2 The delay is unreasonable under the circumstances involved.

16.3.1.1.3 The delay was not within the contemplation of District and Developer; and

16.3.1.1.4 Developer timely complies with the claims procedure of the Contract Documents.

16.4 Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Developer, but its use shall be determined solely by the District.

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").

17.3 Change Orders

A Change Order is a written instrument prepared and issued by the District and/or the Architect and signed by the District (as authorized by the District's Board of Education), the Developer, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

17.3.1 A description of a change in the Work.

17.3.1.1 The amount of the adjustment in the Guaranteed Maximum Price, if any; and

17.3.1.2 The extent of the adjustment in the Contract Time, if any.

17.3.2 Changes in Guaranteed Maximum Price

A Change Order Request ("COR") shall include breakdowns pursuant to the provisions herein to validate any change in Guaranteed Maximum Price.

17.3.3 Unknown and/or Unforeseen Conditions

If Developer submits a COR 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 COR on provable information that, to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, the District shall deny the COR and the Developer shall complete the Project without any increase in Guaranteed Maximum Price and/or Contract Time based on that COR.

17.4 Proposed Change Order

17.4.1 Definition of Proposed Change Order

A Proposed Change Order ("PCO") is a written request prepared by the Developer requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work, to the Guaranteed Maximum Price, and/or to the Contract Time.

17.4.2 Changes in Guaranteed Maximum Price

A PCO shall include breakdowns and backup documentation pursuant to the provisions herein and sufficient, in the District's judgment, to validate any change in Guaranteed Maximum Price. In no case shall Developer or any of its Subcontractors be permitted to reserve rights for additional compensation for Change Order Work.

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

assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof.

17.6.3 Materials

Developer shall be compensated for the costs of materials necessarily and actually used or consumed in connection with the performance of the change in the Work. Costs of materials may include reasonable costs of transportation from a source closest to the Site of the Work and delivery to the Site. If discounts by material suppliers are available for materials necessarily used in the performance of the change in the Work, they shall be credited to the District. If materials necessarily used in the performance of the change in the Work are obtained from a supplier or source owned in whole or in part by the Developer, compensation therefor shall not exceed the current wholesale price for such materials. If, in the reasonable opinion of the District, the costs asserted by the Developer for materials in connection with any change in the Work are excessive, or if the Developer fails to provide satisfactory evidence of the actual costs of such materials from its supplier or vendor of the same, the costs of such materials and the District's obligation to pay for the same shall be limited to the then lowest wholesale price at which similar materials are available in the quantities required to perform the change in the Work. The District may elect to furnish materials for the change in the Work, in which event the Developer shall not be compensated for the costs of furnishing such materials or any mark-up thereon.

17.6.4 Equipment

As a precondition to the District's duty to pay for Equipment rental or loading and transportation, Developer shall provide satisfactory evidence of the actual costs of Equipment from the supplier, vendor or rental agency of same. Developer shall be compensated for the actual cost of the necessary and direct use of Equipment in the performance of the change in the Work. Use of Equipment in the performance of the change in the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Equipment moved by its own power shall include time required to move the Equipment to the site of the Work from the nearest available rental source of the same. If Equipment is not moved to the Site by its own power, Developer will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Equipment is used for performance of any portion of the Work other than the change in the Work. Unless prior approval in writing is obtained by the Developer from the Architect, the Project Inspector, the Construction Manager and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Developer shall not be entitled to an allowance or any other compensation for Equipment or tools used in the performance of a change in the Work where the Equipment or tools have a replacement value of $500.00 or less. Equipment costs claimed by the Developer in connection with the performance of any Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed

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.

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17.7 Format for Change Order Request and Proposed Change Order

The following format shall be used as applicable by the District and the Developer (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract Documents, supported by attached documentation. Any spaces left blank will be deemed no change to cost or time.

	SUBCONTRACTOR PERFORMED WORK	**ADD**	**DEDUCT**
(a)	**Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Subcontractor's overhead and profit,** not to exceed five percent (5%) of **Item (d)**		
(f)	**Subtotal**		
(g)	**Add Developer's overhead and profit**, not to exceed five percent (5%) of **Item (f)**		
(h)	**Subtotal**		
(i)	**Add Bond and Insurance,** at Developer's Cost, not to exceed two and five hundred thirty six millionths percent (2.0536%) of **Item (h)**		
(j)	**TOTAL**		
(k)	**Time** (zero unless indicated; "TBD" not permitted)	**___ Calendar Days**	

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	DEVELOPER PERFORMED WORK		
(a)	**Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Developer's overhead and profit,** not to exceed fifteen percent (15%) of **Item (d).**		
(f)	**Subtotal**		
(g)	**Add Bond and Insurance,** at Developer's Cost, not to exceed two and five hundred thirty six millionths percent (2.0536%) of **Item (h)**		
(h)	**TOTAL**		
(i)	**Time** (zero unless indicated; "TBD" not permitted)	**___ Calendar Days**	

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.

17.9 Determination of Change Order Cost

17.9.1 The amount of the increase or decrease in the Guaranteed Maximum Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

17.9.1.1 District acceptance of a COR or PCO.

17.9.1.2 By amounts contained in Developer's schedule of values, if applicable.

17.9.1.3 By agreement between District and Developer.

17.10 Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work less the value of any new work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. If Developer offers a proposed amount for a deductive Change Order(s) for work performed directly by the Developer, Developer shall include a minimum of nine and one half percent (9.5%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work and Developer shall include a minimum of four and one half percent (4.5%). Any deviation from this provision shall not be allowed.

17.11 Addition or Deletion of Alternate Bid Item(s)

17.11.1 If a subcontractor's Bid Form and Proposal includes proposal(s) for Alternate Bid Item(s), during Developer's performance of the Work, the District may elect to add or delete any such Alternate Bid Item(s) if not included in the Contract at the time of award. If the District elects to add or delete Alternate Bid Item(s) after Contract award, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Bid Form and Proposal unless the parties agree to a different price and the Contract Time shall be adjusted by the number of days allocated in the Contract Documents.

17.11.2 For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Developer, and the Developer shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Developer's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

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 overheard 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

commencement of force account work, or exceeding the force account budget.

17.13.6 The Developer shall diligently proceed with the work, and on a daily basis, submit a daily force account report no later than 5:00 p.m. each day on a form supplied by the District. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Developer for its records. The District will not sign, nor will the Developer receive compensation for, work the District cannot verify. The Developer will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work

17.13.7 In the event the Developer and the District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Developer's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

17.14 Price Request

17.14.1 Definition of Price Request

A Price Request ("PR") is a written request prepared by the Architect or Construction Manager requesting the Developer submit to the District, the Construction Manager and the Architect an estimate of the effect of a proposed change in the Work on the Guaranteed Maximum Price and the Contract Time.

17.14.2 Scope of Price Request

A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Developer to provide the cost breakdowns required. The Developer shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.15 Accounting Records

With respect to portions of the Work performed by Change Orders and Construction Change Directives, the Developer shall keep and maintain cost-accounting records satisfactory to the District, including, without limitation, Job Cost Reports as provided in these General Conditions, which shall be available to the District on the same terms as any other books and records the Developer is required to maintain under the Contract Documents. Such records shall include without limitation hourly records for Labor and Equipment and itemized records of materials and Equipment used that day in connection with the performance of any Work. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Construction Manager and the Architect or the Project Inspector upon request.

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. Payments

19.1 Guaranteed Maximum Price

As compensation for Developer's construction of the Project, the District shall pay Developer pursuant to the terms of Exhibit "C" to the Facilities Lease. This is the total amount payable by the District to the Developer for performance of the Work under the Contract.

19.2 Applications for Tenant Improvement Payments

19.2.1 Procedure for Applications for Tenant Improvement Payments

19.2.1.1 Not before the fifth (5th) day of each calendar month during the progress of the Work, Developer shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be on a form approved by the District and shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

19.2.1.1.1 The amount paid to the date of the Application for Payment to the Developer, to all its Subcontractors, and all others furnishing labor, material, or equipment under the Contract Documents.

19.2.1.1.2 The amount being requested under the Application for Payment by the Developer on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract Documents.

19.2.1.1.3 The balance that will be due to each of such entities after said payment is made.

19.2.1.1.4 A certification that the As-Built Drawings and annotated Specifications are current.

19.2.1.1.5 Itemized breakdown of work done for the purpose of requesting partial payment.

19.2.1.1.6 An updated and acceptable construction schedule in conformance with the provisions herein.

19.2.1.1.7 The additions to and subtractions from the Guaranteed Maximum Price and Contract Time.

19.2.1.1.8 A total of the retentions held.

19.2.1.1.9 Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time.

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 [to be confirmed] 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

DIR, or within ten (10) days of any request by the District or the DIR; and

19.2.1.1.16.2 Any delay in Developer and/or its Subcontractor(s) providing CPRs in a timely manner may directly delay the Developer's payment.

19.2.1.1.17 [to be confirmed] Applications received after June 20th will not be paid until the second week of July and applications received after December 12th will not be paid until the first week of January.

19.2.2 Prerequisites for Tenant Improvement Payments

19.2.2.1 First Payment Request

The following items, if applicable, must be completed before the District will accept and/or process the Developer's first payment request:

19.2.2.1.1 Installation of the Project sign.

19.2.2.1.2 Installation of field office.

19.2.2.1.3 Installation of temporary facilities and fencing.

19.2.2.1.4 Schedule of Values.

19.2.2.1.5 Developer's Construction Schedule.

19.2.2.1.6 Schedule of unit prices, if applicable.

19.2.2.1.7 Submittal Schedule.

19.2.2.1.8 Receipt by Architect of all submittals due as of the date of the payment application.

19.2.2.1.9 Copies of necessary permits.

19.2.2.1.10 Initial progress report.

19.2.2.1.11 List of Subcontractors, with names, license numbers, telephone numbers, and Scope of Work.

19.2.2.1.12 All bonds and insurance endorsements; and

19.2.2.1.13 Resumes of Developer's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

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.

19.3.3.3 Minor deviations from the Contract Documents correctable prior to completion; and

19.3.3.4 Specific qualifications expressed by the Architect.

19.3.4 District's approval of the certified Application for Payment shall be based on Developer complying with all requirements for a fully complete and valid certified Application for Payment.

19.3.5 Payments to Developer

19.3.5.1 Within thirty (30) days after approval of the Application for Payment, Developer shall be paid a sum equal to ninety-five percent (95%), of the value of the Guaranteed Maximum Price (as verified by Architect and Inspector and certified by Developer) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Developer's best estimate. No inaccuracy or error in said estimate shall operate to release the Developer, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of the Contract Documents, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.5.2 The Developer may not be entitled to have payment requests processed, or may be entitled to have only partial payment made for Work performed, so long as any direction given by the District concerning the Work, or any portion thereof, remains incomplete.

19.3.6 No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment

19.3.7 Warranty of Title

19.3.7.1 If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Developer, Developer and Developer's Surety shall promptly, on demand by District and at Developer's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

19.3.7.2 If the Developer fails to furnish to the District within ten (10) calendar days after demand by the District satisfactory evidence that a lien or a claim based on a stop payment notice has been released, discharged, or secured, the District may discharge such

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.

19.4.1.13 Failure of the Developer to prosecute the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates.

19.4.1.14 Failure to provide acceptable electronic certified payroll records, as required by the Labor Code, by these Contract Documents or by written request for each journeyman, apprentice, worker, or other employee employed by the Developer and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate.

19.4.1.15 Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with labor compliance monitoring and enforcement by the DIR.

19.4.1.16 Failure to comply with any, if applicable federal requirements regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements.

19.4.1.17 Failure to properly maintain or clean up the Site.

19.4.1.18 Failure to timely indemnify, defend, or hold harmless the District.

19.4.1.19 Failure to perform any implementation and/or monitoring required by the General Permit, including without limitation any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Developer.

19.4.1.20 Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits.

19.4.1.21 Failure to pay any royalty, license or similar fees.

19.4.1.22 Failure to pay Subcontractor(s) or supplier(s) as required by law and Developer's subcontract agreement and by the Contract Documents;

19.4.1.23 Failure to comply with the District's Local, Small Local and Small Local Resident Business Enterprise Program; and

19.4.1.24 Developer is otherwise in breach, default, or in substantial violation of any provision of 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

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Developer and Subcontractors and/or material or equipment suppliers. The joint check

payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, or a material or equipment supplier, or any obligation from the District to such Subcontractor or a material or equipment supplier or rights in such Subcontractor against the District.

20. Completion of the Work

20.1 Completion

20.1.1 District will accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District.

20.1.2 The Work may only be accepted as complete by action of the governing board of the District.

20.1.3 District, at its sole option, may accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District, except for minor corrective items, as distinguished from incomplete items. If Developer fails to complete all minor corrective items within fifteen (15) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.4 At the end of the fifteen (15) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Maximum Price, and/or District's right to perform the Work of the Developer.

20.2 Close-Out/Certification Procedures

20.2.1 Punch List

The Developer shall notify the Architect when Developer considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Developer and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

20.2.2 Close-Out/Certification Requirements

20.2.2.1 Utility Connections

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. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2 Upon Developer's completion of all items on the Punch List and any other uncompleted portions of the Work, the Developer shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Developer, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3 Final Inspection Requirements

20.3.3.1 Before calling for final inspection, Developer shall determine that the following have been performed:

20.3.3.1.1 The Work has been completed.

20.3.3.1.2 All life safety items are completed and in working order.

20.3.3.1.3 Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

20.3.3.1.4 Electrical circuits scheduled in panels and disconnect switches labeled.

20.3.3.1.5 Painting and special finishes complete.

20.3.3.1.6 Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

20.3.3.1.7 Tops and bottoms of doors sealed.

20.3.3.1.8 Floors waxed and polished as specified.

20.3.3.1.9 Broken glass replaced and glass cleaned.

20.3.3.1.10 Grounds cleared of Developer's equipment, raked clean of debris, and trash removed from Site.

20.3.3.1.11 Work cleaned, free of stains, scratches, and other foreign matter, damaged and broken material replaced.

20.3.3.1.12 Finished and decorative work shall have marks, dirt, and superfluous labels removed.

20.3.3.1.13 Final cleanup, as provided herein.

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

shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

21.2 Prerequisites for Final Payment

The following conditions must be fulfilled prior to Final Payment:

21.2.1 A full release of all Stop Payment Notices served in connection with the Work shall be submitted by Developer.

21.2.2 A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the final Tenant Improvement Payment.

21.2.3 A duly completed and executed unconditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment(s).

21.2.4 A duly completed and executed "AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS" from the Contractor.

21.2.5 The Developer shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.6 Each Subcontractor shall have delivered to the Developer all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.7 Developer must have completed all requirements set forth under "Close-Out/Certification Procedures," including, without limitation, submission of an approved set of complete Record Drawings.

21.2.8 Architect shall have issued its written approval that final payment can be made.

21.2.9 The Developer shall have delivered to the District all manuals and materials required by the Contract Documents, which must be approved by the District.

21.2.10 The Developer shall have completed final clean up as provided herein.

21.3 Retention

21.3.1 The retention, less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid:

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.

23.2 Correction of Work

23.2.1 Correction of Rejected Work

Pursuant to the notice provisions herein, the Developer shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Developer shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

23.2.2 One-Year Warranty Corrections

If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Developer shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract Documents and termination of the Contract Documents. The District shall give such notice promptly after discovery of the condition.

23.3 District's Right to Perform Work

23.3.1 If the Developer should neglect to prosecute the Work properly or fail to perform any provisions of the Contract Documents, the District, after providing FORTY-EIGHT (48) hours written notice and an opportunity to cure the failure, to the Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Developer.

23.3.2 If it is found at any time, before or after completion of the Work, that Developer has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

23.3.2.1 That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Developer at no additional cost to the District.

23.3.2.2 That the District deduct from any amount due Developer the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

23.3.2.3 That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either

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.

25.3.2 The Claim shall identify:

25.3.2.1 The issues, events, conditions, circumstances and/or causes giving rise to the dispute;

25.3.2.2 The pertinent dates and/or durations and actual and/or anticipated effects on the Guaranteed Maximum Price, Contract Schedule milestones and/or Contract Time adjustments; and

25.3.2.3 The line-item costs for labor, material, and/or equipment, if applicable; or

25.3.2.4 A request by Contractor, if any, to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration.

25.3.3 The Claim shall include the following certification by the Developer:

25.3.3.1 The undersigned Developer certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Developer.

25.3.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

25.4 Claim Resolution pursuant to Public Contract Code section 9204

25.4.1 STEP 1:

25.4.1.1 Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, the District shall conduct a reasonable review of the Claim and, within a period **not to exceed 45 days**, shall provide the Developer a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Developer may, **by mutual agreement**, extend the time period to provide a written statement. If the District needs approval from its governing body to provide the Developer a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, the District shall have **up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension**, expires to provide

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.

25.4.3 STEP 3:

25.4.3.1 Any disputed portion of the claim, as identified by Developer in writing, shall be submitted to nonbinding mediation, with the District and Developer sharing the associated costs equally. The District and Developer shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

25.4.3.1.1 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

25.4.3.2 Unless otherwise agreed to by the District and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

25.4.4 STEP 4:

25.4.4.1 If mediation under this section does not resolve the parties' dispute, the District may, but does not require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

25.5 Subcontractor Pass-Through Claims

25.5.1 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a District because privity of contract does not exist, the contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Developer present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

25.5.2 Within 45 days of receipt of this written request from a subcontractor, Developer shall notify the subcontractor in writing as to whether the Developer presented the Claim to the District and, if Developer did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

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

documentation supporting the Claim or relating to defenses or claims the District may have against the Developer.

25.7.1.3.1 If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Developer.

25.7.1.3.2 The District's written response to the claim, as further documented, shall be submitted to the Developer within thirty (30) 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 or requested documentation, whichever is greater.

25.7.1.4 If Developer disputes the District's written response, or the District fails to respond within the time prescribed, Developer may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

25.7.1.5 Following the meet and confer conference, if the claim or any portion of it remains in dispute, the Developer shall file a claim 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 the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

25.7.1.6 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

25.7.1.7 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act, (commencing with Section 2016) of Chapter 1 of Title 4 of part 4 of the Code of Civil Procedure) shall apply to any proceeding

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, Apprentice, 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 electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

26.2 Wage Rates, Travel, and Subsistence

26.2.1 Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. Developer shall obtain and post a copy of these wage rates at the job site.

26.2.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

26.2.3 Developer shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Developer or any Subcontractor and such workers.

26.2.4 If, prior to execution of the Facilities Lease, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

26.2.5 Pursuant to Labor Code section 1775, Developer shall, as a penalty, forfeit the statutory amount (believed by the District to be currently two hundred dollars ($200) to District for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Developer or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each

worker was paid less than the prevailing wage rate, shall be paid to each worker by Developer.

26.2.6 Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and that minimum wage rate shall be retroactive to time of initial employment of the person in that classification.

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 System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online on a weekly basis and within ten (10) days of any request by the District or Labor Commissioner at http://www.dir.ca.gov/Public-Works/Certified/Payroll-Reporting.html or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work.

26.4.2 The CPRs enumerated hereunder shall be filed directly with the DIR on a weekly basis or to the requesting party, whether the District or DIR, within ten (10) days after receipt of each written request. The CPRs from the Developer and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District may not make any payment to Developer until:

26.4.2.1 The Developer and/or its Subcontractor(s) provide CPRs acceptable to the District and DIR.

26.4.2.2 Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District or DIR in a timely manner may directly delay the District's review and/or audit of the CPRs and Developer's payment.

26.4.3 All CPRs shall be available for inspection at all reasonable hours at the principal office of Developer on the following basis:

26.4.3.1 A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

26.4.3.2 CPRs shall be made available for inspection or furnished upon request or as required by regulation to a representative of the District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the DIR.

26.4.3.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, Division of Apprenticeship Standards, or the Division of Labor Standards

Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

26.4.4 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, Division of Labor Standards Enforcement, or DIR shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of 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.

26.6.6 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractor may be required to make contributions to the apprenticeship program.

26.6.7 If Developer or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

26.6.7.1 Be denied the right to bid on any subsequent project for one (1) year from the date of such determination.

26.6.7.2 Forfeit, as a penalty, to District the full amount stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

26.6.7.3 Developer and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

26.6.7.4 Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

26.7 [Reserved]

26.8 Non-Discrimination

26.8.1 Developer herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, sexual orientation, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3 of Title 2 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set

forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

26.8.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

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.

28.1.4 Section 4554 of the Government Code states in pertinent part:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

28.1.5 Under this Article, "public purchasing body" is District and "bidder" is Developer.

28.2 Excise Taxes

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Maximum Price.

28.3 Taxes

Guaranteed Maximum Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 et seq. of the Revenue and Taxation Code, Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

28.4 Shipments

All shipments must be F.O.B. destination to Site or approved sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Maximum Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

28.5 Compliance with Government Reporting Requirements

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project of which it is part, or for any other reason, Developer shall comply with those reporting requirements at the request of the District at no additional cost.

[END OF DOCUMENT]

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 "Mitigation Monitoring and Reporting Program" attached hereto and incorporated herein.

NOISE IMPACT AND MITIGATION MEASURES

Significance Criteria

The following criteria were used to evaluate the significance of environmental noise resulting from the Project

a) **Noise and Land Use Compatibility.** Public school districts are not subject to local plans, codes, or ordinances. The following significance threshold is used in this analysis as a measure of acceptability (which does happen to be consistent with City of Oakland standards):

   a. School uses are considered "normally acceptable" where daytime exterior noise exposures are 60 dBA L_{eq} or less and daytime interior exposures are 50 dBA L_{eq} or less

b) **Vibration Exposure.** A significant impact would be identified if the construction of the project would expose persons to vibration levels exceeding 0.3 in/sec peak particle velocity (PPV) because of the potential to result in cosmetic damage to buildings of normal conventional construction.

c) **Permanent Noise Increase from Project Traffic and Operations.** The impact would be considered significant if the project would increase noise levels at noise sensitive receptors by 3 dBA L_{dn} or L_{eq} or greater where exterior noise levels would exceed the normally acceptable noise level standard.[1] Where noise levels would remain at or below

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[1] Per the Noise Element of the Oakland General Plan, residential land uses are considered "normally acceptable" in noise environments of 60 dBA L_{dn} or less.

the normally acceptable noise level standard with the project, noise level increases of 5 dBA L_{dn} or L_{eq} or greater would be considered significant.

d) **Temporary Noise Increase from Construction Noise.** Construction noise impacts would be considered significant if hourly average noise levels received at noise sensitive residential land uses are 60 dBA L_{eq} and at least 5 dBA L_{eq} above the ambient noise environment when the duration of the noise-generating activities last for more than one year.

Impact 1: **Noise and Land Use Compatibility. Future noise levels at the project site would be considered compatible with the site's usage. This is a less-than-significant impact.**

The only new noise sensitive outdoor use area that would be added with the project is the multi-purpose outdoor gathering space, which would be located in a central courtyard type area and surrounded on all side by the high school building. Daytime hourly average noise levels in this space would be below 60 dBA L_{eq} and would meet the 'normally acceptable' criteria of 60 dBA L_{eq} or less.

Exterior noise levels at the facade of the high school building would be exposed to daytime exterior noise levels 53 to 60 dBA L_{eq}. A typical school structure would provide about 15 dBA of noise reduction from exterior noise sources with windows open and 25 to 30 dBA of noise reduction with windows in the closed position. With exterior noise levels at the building facades 60 dBA L_{eq} or less, interior noise levels would be below 45 dBA L_{eq} with windows in the open or closed positions. Interior noise levels within proposed land uses would be considered compatible.

This is a less-than-significant impact.

Mitigation Measures: None

Impact 2: **Exposure to Excessive Groundborne Vibration. Construction-related vibration would not be excessive at nearby residential land uses or existing school buildings. This is a less-than-significant impact.**

The construction of the project may generate perceptible vibration when heavy equipment or impact tools (e.g. jackhammers, hoe rams, etc.) are used in areas adjacent to developed properties. Construction activities would include parking lot renovation, high school building construction and site work, removal of portables, and interior kitchen renovation.

The City of Oakland does not establish a vibration limit for construction. The California Department of Transportation uses a vibration limit of 0.3 in/sec PPV for buildings that are found to be structurally sound and designed to modern engineering standards. No sensitive historic structures or buildings that are documented to be structurally weakened adjoin the project site. Therefore, groundborne vibration levels exceeding 0.3 in/sec PPV would have the potential to result in a significant vibration impact.

Project construction activities, such as drilling, the use of jackhammers, rock drills and other high-power or vibratory tools, and rolling stock equipment (tracked vehicles, compactors, etc.) may generate substantial vibration in the immediate vicinity of the work area. Table 4 presents typical vibration levels that could be expected from construction equipment at a distance of 25 feet. Pile driving would not be expected as a foundation construction technique.

TABLE 4 Vibration Source Levels for Construction Equipment

Equipment		PPV at 25 ft. (in/sec)	Approximate L_v at 25 ft. (VdB)
Pile Driver (Impact)	upper range	1.158	112
	typical	0.644	104
Pile Driver (Sonic)	upper range	0.734	105
	typical	0.170	93
Clam shovel drop		0.202	94
Hydromill (slurry wall)	in soil	0.008	66
	in rock	0.017	75
Vibratory Roller		0.210	94
Hoe Ram		0.089	87
Large bulldozer		0.089	87
Caisson drilling		0.089	87
Loaded trucks		0.076	86
Jackhammer		0.035	79
Small bulldozer		0.003	58

Source: Transit Noise and Vibration Impact Assessment. United States Department of Transportation. Office of Planning and Environment. Federal Transit Administration. May 2006.

Vibration levels would vary depending on soil conditions, construction methods, and equipment used. Residences to the north are located as close as about 20 feet from parking lot construction. The Middle School Building is likewise about 20 feet from major construction activities. At this distance, vibration levels for heavy equipment use (vibratory rollers, clam shovel drops) would be expected to be about 0.27 in/sec PPV or less, which is below the 0.3 in/sec PPV significance threshold. Vibration levels as construction moves away from these structures or when lighter construction methods are used would be much lower. Vibration generated by construction activities near the common property line or adjacent to existing school structures would at times be perceptible, however, would not be expected to result in "architectural" damage to these buildings. This is a less-than-significant impact.

Mitigation Measures: None

Impact 3: Permanent Noise Increases from Project Traffic and Operations. Traffic and operational noise levels would not substantially increase as a result of the project. This is a less-than-significant impact.

The new high school building would accommodate an additional 147 students, bringing the total high school students up to 400, which is in addition to the 416 middle school students in the middle school structure. Project improvements would include the construction of a new high school building, parking lot renovation, kitchen renovation, and the removal of existing portable structures currently used for the high school students.

Future usage of the site is anticipated to be similar to existing usage. The only outdoor use area that would be added with the project is the multi-purpose outdoor gathering space, which would be located in a central courtyard surrounded by the high school building on all sides. Indoor

activities, such as classroom activities or changes in the kitchen usage, are not anticipated to generate substantial noise at adjacent noise sensitive uses. The project would increase traffic volumes as more students access the site. Additionally, proposed mechanical equipment could generate noise at adjacent noise sensitive uses. Any additional usage of existing facilities, such as the athletic fields, is also assessed.

A significant noise impact would occur if project operations or traffic would increase noise levels at noise sensitive receptors by 3 dBA L_{dn} or greater where exterior noise levels would exceed the normally acceptable noise level standard or by 5 dBA L_{dn} or greater where exterior noise levels would remain at or below the normally acceptable noise level standard with the project.

Project Traffic Noise
Capistrano Drive will remain as the only roadway that provides vehicular access (ingress and egress) to the school parking lot during operational hours. Traffic volumes were supplied for 5 intersections in the vicinity of the project. Based on a review of these traffic volumes, traffic noise levels are anticipated to increase by less than 2 dBA at all study intersections as a result of the project. The parking lot renovation would add 37 parking spaces to the existing 83 parking spaces, for a total of 120 parking spaces. Noise generated during vehicular circulation and parking activities (i.e., door slamming, engine noise, conversations, etc.) is anticipated to remain similar to existing levels. This is a less-than-significant impact.

School Operations
Currently, James Madison Middle School is in session from 8:00 am to 3:45 pm on Mondays, Tuesdays, Thursdays, and Fridays and from 8:00 am to 12:30 pm on Wednesdays. The high school is in session from 8:25 am to 4:50 pm on Mondays, Tuesdays, Thursdays, and Fridays and from 8:25 am to 1:00 pm on Wednesdays. Sobrante Park Elementary School, located northeast of the site, is in session from 8:30 am to 2:55 pm on Mondays, Tuesdays, Thursdays, and Fridays and from 8:30 am to 1:10 pm on Wednesdays. The bell schedules are not anticipated to change with the project. The addition of 146 students to a campus that already hosts 669 students (253 in the high school and 416 in the middle school) could result in small increases in noise levels resulting from student conversations, parking activities (discussed above), and recreational/field activities. Due to the existing noise environment, which already includes these activities in addition to I-880 traffic noise, this increase in activities would not measurably increase ambient noise levels at adjacent receptors. This is a less-than-significant impact.

Exterior Multi-Purpose Space
The multi-purpose outdoor space would serve as a gathering space and eating space reserved exclusively for the high school students and staff. The multi-purpose outdoor space is not anticipated to be used for large events or gatherings and would be located in a central courtyard. Student and staff conversations are not anticipated to be audible at adjacent noise sensitive land uses. This is a less-than-significant impact.

Mechanical Equipment
The High School building would include roof mounted heating, ventilation, and air conditioning equipment, including a chiller and an air cooled heat pump. The proposed chiller is an AERMEC

NRL 028/075, which is specified to generate a noise level of 42 to 46 dBA at a distance of 30 feet from the external surface of the unit, depending on the model selected. The proposed 1800 RPM Goulds Water Technology e-SV pump and motor is specified to generate a noise level of 59 dBA at a distance of 5 feet from the equipment. At the closest residences to the north, located about 150 feet from the northern façade of the high school building, combined noise levels from this equipment would be below 35 dBA and would not be audible above existing ambient noises, not taking into account any shielding from the rooftop structure or any parapet walls, etc. Depending on the location of the equipment on the rooftop, noise levels could be considerably less as the roof and any parapet wall structures would provide significant acoustical shielding. Noise levels at residences located further from the site, or in areas that are more shielded from proposed equipment, would be exposed to even lower levels. This is a less-than-significant impact.

Mitigation Measures: None

Impact 4: **Temporary Noise Increase from Construction.** Noise levels generated by construction activities on the site would not result in a substantial temporary increase in noise. **This is a less than significant impact.**

Project construction would include the construction of a new high school building, parking lot renovation, kitchen renovation, and the removal of existing portable structures. Construction activities are anticipated to occur for a total of 345 days, spanning approximately 17 months, from March 2016 through August 2017. Construction would occur in four phases, as follows.

- Phase 1: Parking Lot Renovation (35 days)
- Phase 2: High School Building and Surrounding Site Work (Demolition, 20 days, Construction, 290 days)
- Phase 3: Removal of Portables
- Phase 4: Kitchen Renovation (Interior)

Parking lot renovation and demolition work for the high school building site are anticipated to occur between late March and mid-May, for a total of 35 days over a period of about 2 months. Demolition for the high school site would occur over 20 days during June 2016. Construction of the high school building is anticipated to occur for a total of 290 days over a period of about 13 months (mid-July 2016 to mid-August 2017). Removal of the portables and kitchen renovation (interior) would occur toward the end of construction. Based on our experience with similar projects, it is estimated that exterior construction and site work of the high school building would make up 9 of the 13 months of construction. As a result, exterior construction activities at the site, including parking lot renovation, site demolition, high school building exterior construction and site work, and removal of portables are anticipated to be completed in a period of just under 12 months. The remaining 5 months of the construction period would include pauses between phases and interior construction of the high school building and kitchen.

Construction noise impacts would be considered significant if hourly average noise levels received at noise sensitive residential land uses are 60 dBA L_{eq} and at least 5 dBA L_{eq} above the

ambient noise environment when the duration of the noise-generating activities last for more than one year.

Residences to the north of the project site are located directly adjacent to the Parking Lot and as close as about 150 feet from the proposed high school building location. Residences to the east and south are located about 400 and 500 feet from the proposed high school building, respectively. Residences to the west are located about 450 feet from the proposed high school building and are well shielded by the existing school structures on site.

Construction equipment noise varies greatly depending on the construction activity performed, type and specific model of equipment, and the condition of equipment used. Noise impacts resulting from construction depend on the noise generated by various pieces of construction equipment, the timing and duration of noise generating activities, the distance between construction noise sources and noise sensitive receptors, any shielding provided by intervening barriers or structures, and existing ambient noise levels.

Each construction activity would include a different mix of equipment operating. Construction noise levels would vary based on the amount of equipment in operation and location where the equipment is operating. Typical construction noise levels at a distance of 50 feet are shown in Tables 5 and 6. Table 5 illustrates the average noise level range by typical construction phase type and Table 6 shows the maximum noise level range for different construction equipment. Table 6 levels are consistent with construction noise levels calculated for the project in the Federal Highway Administration (FHWA) Roadway Construction Noise Model, including the anticipated equipment that would be used for each phase of the project. Most demolition and construction noise is in the range of 80 to 90 dBA at a distance of 50 feet from the source.

TABLE 5 Typical Ranges of Construction Noise Levels at 50 Feet, dBA L_{eq}

Equipment	School Buildings		Roads and Surface Parking Lots	
	I	II	I	II
Ground Clearing	84	84	84	84
Excavation	89	79	88	78
Foundations	78	78	88	88
Erection	87	75	79	78
Finishing	89	75	84	84

I - All pertinent equipment present at site. II - Minimum required equipment present at site.
Adapted from U.S. EPA., Legal Compilation on Noise, Vol. 1, p. 2-104, 1973

TABLE 6 Construction Equipment Noise Emission Levels (at 50 feet)

Equipment Category	L_{max} Level (dBA)[1,2]	Impact/Continuous*
Arc Welder	73	Continuous
Auger Drill Rig	85	Continuous
Backhoe	80	Continuous
Bar Bender	80	Continuous
Boring Jack Power Unit	80	Continuous
Chain Saw	85	Continuous
Compressor[3]	70	Continuous
Compressor (other)	80	Continuous
Concrete Mixer	85	Continuous
Concrete Pump	82	Continuous
Concrete Saw	90	Continuous
Concrete Vibrator	80	Continuous
Crane	85	Continuous
Dozer	85	Continuous
Excavator	85	Continuous
Front End Loader	80	Continuous
Generator	82	Continuous
Generator (25 KVA or less)	70	Continuous
Gradall	85	Continuous
Grader	85	Continuous
Grinder Saw	85	Continuous
Horizontal Boring Hydro Jack	80	Continuous
Hydra Break Ram	90	Impact
Impact Pile Driver	105	Impact
Insitu Soil Sampling Rig	84	Continuous
Jackhammer	85	Impact
Mounted Impact Hammer (hoe ram)	90	Impact
Paver	85	Continuous
Pneumatic Tools	85	Continuous
Pumps	77	Continuous
Rock Drill	85	Continuous
Scraper	85	Continuous
Slurry Trenching Machine	82	Continuous
Soil Mix Drill Rig	80	Continuous
Street Sweeper	80	Continuous
Tractor	84	Continuous
Truck (dump, delivery)	84	Continuous
Vacuum Excavator Truck (vac-truck)	85	Continuous
Vibratory Compactor	80	Continuous
Vibratory Pile Driver	95	Continuous
All other equipment with engines larger than 5 HP	85	Continuous

Notes:
*Impact activities impact the ground or construction surface, such as pile driving, while continuous activities emit more constant noise, such as construction vehicles.
[1]Measured at 50 feet from the construction equipment, with a "slow" (1 sec.) time constant.
[2]Noise limits apply to total noise emitted from equipment and associated components operating at full power while engaged in its intended operation.
[3]Portable Air Compressor rated at 75 cfm or greater and that operates at greater than 50 psi.
Source: FHWA

Construction activities are anticipated to generate hourly average noise levels of 78 to 89 dBA L_{eq} at a distance of 50 feet during busy construction periods. Maximum instantaneous noise levels would be about 78 to 90 dBA L_{max} at a distance of 50 feet. Pile driving is not anticipated as a construction method for this project. Noise levels would typically drop off at a rate of about 6 decibels per doubling of distance from the construction noise source.

During renovation of the parking lot, which would occur over a period of about 35 days, residences directly adjacent to the site would be exposed to hourly average noise levels of about 75 to 85 dBA L_{eq} and maximum instantaneous noise levels of about 80 to 90 dBA L_{max}. Noise levels at noise sensitive school facilities located adjacent to construction would be similar. During high school building demolition and exterior construction, noise levels at residences to the north (located about 150 feet from the northern façade of the building) would be exposed to hourly average noise levels of about 70 to 80 dBA L_{eq} and maximum instantaneous noise levels of about 75 to 85 dBA L_{max}. Noise levels at residences to the south and east, located about 300 and 500 feet from the high school building location, would be about 6 and 10 dB lower, respectfully. Noise levels would be lower at residences to the west, which 500 feet or further from the high school building location and are well shielded by existing on-site structures. Noise generated during interior building construction would not be anticipated to be audible off-site.

Construction activities would generate noise levels exceeding 60 dBA L_{eq} and at least 5 dBA L_{eq} above the ambient noise environment at nearby residences. However, portions of construction that are anticipated to generate high noise levels would be completed in a period of about 12 months. The remainder of the construction period would consist of pauses between phases and interior building construction would not be anticipated to be audible at these noise sensitive locations.

Typically, construction projects do not generate significant noise impacts when standard construction best management practices are enforced at the project site and when the duration of the noise generating construction period is limited to one year or less. Construction noises associated with projects of this type are disturbances that are necessary for the construction or repair of buildings and structures in urban areas. Reasonable regulation of the hours of construction, as well as regulation of the arrival and operation of heavy equipment and the delivery of construction materials, are necessary to protect the health and safety of persons, promote the general welfare of the community, and maintain the quality of life.

The following standard controls, consistent with the Oakland Municipal Code, are assumed to be included in the project:

- Construction activities shall be limited to the hours between 7:00 am and 9:00 pm.
- All construction equipment powered by internal combustion engines shall be properly muffled and maintained.
- Unnecessary idling of internal combustion engines is prohibited.

- All stationary noise-generating construction equipment such as tree grinders and air compressors are to be located as far as is practical from existing residences.
- Quiet construction equipment, particularly air compressors, are to be selected whenever possible.
- Use of pile drivers and jack hammers shall be prohibited on Sundays and holidays, except for emergencies and as approved in advance by the Building Official.

Implementation of the above standard controls would reduce construction noise levels emanating from the site, limit construction hours, and minimize disruption and annoyance. With the implementation of these controls, and recognizing that noise generated by construction activities would occur over a temporary period, the temporary increase in ambient noise levels would be less-than-significant.

In addition, it is further recommended that construction be undertaken with consideration for school activities and hours, as follows, to further reduce potential impact of construction noise on the school itself:

- Schedule high noise generating construction activities that are located directly adjacent to school structures during periods when school is not in session, such as summer, school breaks, weekends, and after school dismissal.
- Consider constructing or utilizing temporary noise barriers to shield on-site construction and demolition noise from the school. To be most effective, the barrier should be placed as close as possible to the noise source or the sensitive receptor. Examples of barriers include portable acoustically lined enclosure housing for specific equipment (e.g., jackhammer and pneumatic-air tools, which generate the loudest noise), temporary noise barriers (e.g., solid plywood fences or portable panel systems, minimum 8 feet in height), and or acoustical blankets.

Mitigation Measures: **None**

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 bid opening as indicated in the Instructions to Bidders.

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 of Award.

3.3. Within 35 days after the date of the Notice of Award, Developer shall provide data substantiating a request for substitution of "an equal" item, including but not limited to the following:

3.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

3.3.2. Available maintenance, repair or replacement services;

3.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

3.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

3.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

3.4. No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Developer. The Developer warrants that if substitutes are approved:

3.4.1. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;

3.4.2. The Developer provides the same warranties and guarantees for the substitute that would be provided for that specified;

3.4.3. The Developer shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Developer without a change in the Contract Price or Contract Time;

3.4.4. The Developer shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

3.4.5. The Developer shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Developer agrees to execute a deductive Change Order to reflect that credit.

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 price or item on the accepted schedule of values, that price may control. The District, at its sole discretion, may adopt the Schedule of Values Price as the value of the work done or any portion thereof.

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 201__, and is made by and between Vila Tulum Joint Ventures ("Developer"), as Lessor, and the Oakland Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 2017, (the "Lease") for the leasing by Developer to District of the Project Site and Project in Oakland, California, referenced in the Lease.

2. District hereby confirms the following:

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

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

C. That the term for the Lease Payments under the Facilities Lease commenced on _____, 20__ and will expire at 11:59 P.M. on _____, 20__.

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

Dated: _____ __ , 201__	Dated: _____ __ , 201__
Oakland Unified School District	Vila Tulum Joint Ventures
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT F

CONSTRUCTION SCHEDULE

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

Villa Construction — Madison Park High School Pre-Con Schedule

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors
1		NTP	0 days	Thu 9/14/17	Thu 9/14/17	
2		Submittals	40 days	Thu 9/14/17	Wed 11/8/17	1
4		Site Mobilization	1 days	Thu 9/14/17	Mon 9/18/17	1
5		Temp Fencing	4 days	Tue 9/19/17	Fri 9/22/17	4
6		SWPPP	1 days	Mon 9/25/17	Wed 9/27/17	5
7		Site Demo	5 days	Thu 9/28/17	Wed 10/4/17	6
8		Survey	3 days	Thu 10/5/17	Mon 10/9/17	7
9		Grading	3 days	Tue 10/10/17	Thu 10/12/17	8
10		Grade Building Pads	3 days	Fri 10/13/17	Tue 10/17/17	9
11		Site UG Utilities	10 days	Fri 10/13/17	Thu 10/26/17	9
12		Trench Building Footings	7 days	Wed 10/18/17	Thu 10/26/17	10
3		Long Lead Items	60 days	Thu 10/19/17	Wed 1/10/18	2FS-15 days
13		Building UG Utilities	9 days	Fri 10/27/17	Wed 11/8/17	12
14		Building Ftg Rebar	8 days	Fri 10/27/17	Tue 11/7/17	12
15		Building Ftg Conc.	5 days	Thu 11/9/17	Wed 11/15/17	13,14
16		Slab on Grade Formwork	7 days	Thu 11/16/17	Fri 11/24/17	15
17		Rebar/Embeds	5 days	Mon 11/27/17	Fri 12/1/17	16
18		Pump, Place, Finish, S.O.G.	1 day	Mon 12/4/17	Mon 12/4/17	17
19		Wall Panel Forms, Rebar/Embeds, Pour, & Pick	20 days	Tue 12/5/17	Mon 1/1/18	18
20		Wall Panel Forms, Rebar/Embeds, Pour, & Pick	20 days	Tue 1/2/18	Mon 1/29/18	19
21		Weld Wall Panels	20 days	Tue 1/30/18	Mon 2/26/18	20
22		Sack & Patch Conc. W	2 days	Tue 1/30/18	Wed 1/31/18	20
23		Erect & Set Steel	22 days	Tue 1/30/18	Wed 2/28/18	20
24		Install Metal Decking	8 days	Thu 3/1/18	Mon 3/12/18	23
25		Pump & Place Conc. @ Metal Deck	2 days	Tue 3/13/18	Wed 3/14/18	24
26		Scaffold Buildings	5 days	Thu 3/15/18	Wed 3/21/18	25
27		Built Up Roofing	15 days	Thu 3/15/18	Wed 4/4/18	25
31		Exterior Gyp Board Walls	14 days	Thu 3/22/18	Tue 4/10/18	26
33		Metal Framing	12 days	Thu 3/29/18	Fri 4/13/18	27FS-5 days
28		Roof Top HVAC Units	2 days	Thu 4/5/18	Fri 4/6/18	27
34		Door Frames	7 days	Thu 4/5/18	Fri 4/13/18	33SS+5 days
36		MEP Rough-ins	16 days	Thu 4/5/18	Thu 4/26/18	33SS+5 days
29		HVAC Piping	12 days	Mon 4/9/18	Tue 4/24/18	28
30		PV Panels on Roof	15 days	Mon 4/9/18	Fri 4/27/18	28
35		Aluminum Frames & Glazing	11 days	Mon 4/9/18	Mon 4/23/18	33FS-5 days
32		Fiber Cement Panel over Gyp Board	20 days	Wed 4/11/18	Tue 5/8/18	31
37		Insulation	8 days	Fri 4/20/18	Tue 5/1/18	36FS-5 days
53		Site Concrete Curb & Gutter	7 days	Mon 4/30/18	Tue 5/8/18	30
38		Hang Drywall	8 days	Wed 5/2/18	Fri 5/11/18	37
39		Mud, Tape, & Sand	9 days	Wed 5/9/18	Mon 5/21/18	38FS-3 days
54		Asphalt Paving	3 days	Wed 5/9/18	Fri 5/11/18	53
55		Site Concrete Retaining Walls	5 days	Wed 5/9/18	Tue 5/15/18	53
56		Fence & Gate Posts	2 days	Mon 5/14/18	Tue 5/15/18	54
57		Asphalt Striping	1 day	Mon 5/14/18	Mon 5/14/18	54
58		Site Concrete Paving	8 days	Wed 5/16/18	Fri 5/25/18	55
59		Fence & Gate Install	3 days	Wed 5/16/18	Fri 5/18/18	56
60		Irrigation	8 days	Wed 5/16/18	Fri 5/25/18	55
40		Paint	9 days	Fri 5/18/18	Wed 5/30/18	39FS-2 days
41		Doors & Hardware	13 days	Tue 5/22/18	Thu 6/7/18	39
47		Ceramic tile	10 days	Tue 5/22/18	Mon 6/4/18	39
42		Acoustical Ceiling	11 days	Thu 5/24/18	Thu 6/7/18	40FS-5 days
61		Landscape	15 days	Mon 5/28/18	Fri 6/15/18	60
62		Site Furnishings	2 days	Mon 5/28/18	Tue 5/29/18	58
43		Flooring	13 days	Wed 5/30/18	Fri 6/15/18	42FS-7 days
45		Lighting & Trim	15 days	Wed 5/30/18	Tue 6/19/18	42FS-7 days
46		HVAC Registers	10 days	Wed 5/30/18	Tue 6/12/18	42FS-7 days
51		Visual Display Surfaces	6 days	Thu 5/31/18	Thu 6/7/18	40
52		Blinds	6 days	Thu 5/31/18	Thu 6/7/18	40
44		Casework	10 days	Mon 6/4/18	Fri 6/15/18	43FS-10 days
48		Plumbing Fixtures	10 days	Tue 6/5/18	Mon 6/18/18	47
49		Kitchen Equipment	5 days	Tue 6/5/18	Mon 6/11/18	47
50		TP/TA	5 days	Wed 6/13/18	Tue 6/19/18	48FS-4 days
63		Punch List	8 days	Wed 6/20/18	Fri 6/29/18	45,50,61

Project: Madison Park Pre-Con
Date: Thu 4/27/17

Page 1

EXHIBIT G

SCHEDULE OF VALUES

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

[To be attached 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.

PROJECT LABOR AGREEMENT

FOR THE

OAKLAND UNIFIED SCHOOL DISTRICT

And

Building and Construction Trades Council of Alameda County, AFL-CIO ("Council")
And Affiliated Local Union Signatories

PREAMBLE

This Agreement is made and entered into by and between the Oakland Unified School District ("OUSD" or "District") together with contractors and subcontractors who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Addendum "A"), ("Contractor/Employer(s)"), and the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and its affiliated Local Unions signatory hereto ("Union(s)").

The purpose of this Agreement is to promote efficiency of construction operations for capital projects funded by OUSD, including but not limited to Fund 21-Measure B, Fund 35-County School Facilities Fund, Fund 25-Developer Fees, State Prop 39, and OUSD Measure J New Construction and Modernization Projects, by providing for the orderly and peaceful settlement of labor disputes and grievances without strikes, work stoppages or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project.

The relevant skilled work force requirements described in Education Code section 17407.5 as that statute relates to the commitment that a skilled and trained workforce will be used to perform the Project(s), is deemed to have been established by any Contractor becoming a signatory to this Agreement.

RECITALS

WHEREAS, the timely and successful completion of the Project is of the utmost importance to the District; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the Union(s) signatory to this Agreement employed by Contractor/Employer(s) who are also signatories to this Agreement; and

WHEREAS, it is recognized that on a project of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

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.

1.4 "Apprentice" means an individual registered and participating as an apprentice in a Joint Labor/Management Apprenticeship Program approved by the State of California, Department of Industrial Relations, Division of Apprenticeship Standards.

1.5 "Completion" of work on a project means that point at which the District has determined that the work to construct the project is in all respects 100% complete and that all contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents. Division of State Architect approval is not required for a determining that a project is complete.

1.6 "Construction Contract" means the public works or improvement contract(s), including design-bid-build, design-build, lease-leaseback or other contracts under which construction of the Project is done, which will be awarded by the District and which are necessary to complete the Project, including subcontracts at any tier.

1.6 "Contractor/Employer(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the District or any of its contractors or subcontractors at any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by the District and which incorporate this Agreement.

1.7 "Coordinator" means a designated Agent(s) of the district with authority to act pursuant to this Agreement.

1.7 "Council" means the Building and Construction Trades Council of Alameda County, AFL-CIO.

1.8 "Master Labor Agreement" ("MLA") means the Master Collective Bargaining Agreement of each craft Union(s) signatory to this Agreement, incorporated herein by reference, of which a copy of the most current version, including any amendments shall be made available the District upon request.

1.9 "Project" means a work of improvement for the construction of projects described in section 2.3.

1.10 "Sole Operator" means a licensed contractor with no employees and exempted by the Contractor's State License Board from the requirement to carry workers' compensation insurance. *(See: California Business and Professions Code section 7125.)*

1.11 "Trust Fund(s)" means an agreement for an established vacation, pension or other form of deferred compensation plan, apprenticeship, health benefit, and worker protection and assistance funds established by an applicable Master Labor Agreement.

1.12 "Union(s)" means the Building and Construction Trades Council of Alameda County, AFL-CIO and any affiliated Labor Organization 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.

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 agenized 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

materials testing and inspection, where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.4.1 This Agreement shall apply to any start-up, calibration, commissioning, performance testing, repair, operational revisions to systems and/or subsystems performed on covered work after Project Completion, unless the covered work it is performed by District employees.

2.4.2 This Agreement covers all on-site fabrication work over which the District, or its contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.). Additionally, it is agreed hereby that this Agreement covers any off-site work, including fabrication work necessary for the Project defined herein, that is covered by a current MLA or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.4.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be covered by this Agreement. However, construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud, shall be covered by the terms and conditions of this Agreement.

2.4.5 It is agreed that the District shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the **Letter of Assent** (**Attachment A**) prior to commencing work. The District shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except that work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles V, VI and XI of this Agreement shall apply to such work. It is understood that this, together with the MLAs, is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the District nor the Contractors will be obligated to sign any other local, area, or national agreement.

2.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a contractor shall be performed by construction persons employed under this Agreement who may be directed by other personnel in a supervisory role.

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.

ARTICLE 3

EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Union(s) and District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of a construction contract for the Project, whether as contractor or subcontractor, the Contractor/Employer(s) agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement To Be Bound** in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer(s) enters into a subcontract with any subcontractor providing for the performance of a construction contract, the Contractor/Employer(s) shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor/Employer(s) may not be evaded by subcontracting.

3.4 Each Contractor/Employer(s) shall give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either seven (7) days of entering such subcontract or before such Contractor/Employer(s) commences work on the Project, whichever occurs first. Such notice shall specify the name, address, phone number, and the California State License Board license number of the Contractor/Employer(s). Written notice at a Pre-Job Conference shall be deemed written notice under this provision for those Contractor/Employer(s) listed and present at the Pre-Job only.

3.5 The provisions of this Agreement, including MLA's, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a MLA, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a MLA and is not covered by this Agreement, the provisions of the MLA shall prevail.

3.6 (a) With regard to any Contractor/Employer(s) that is independently signed to any MLA, this Project Labor Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in subsection (b) of this Section 3.6. Any such subcontracting clause in an MLA shall remain and be fully enforceable between each craft union and its signatory employers, and no provision of this Project Labor Agreement shall be interpreted and/or applied in any manner that would give this Project Labor Agreement precedence over subcontracting obligations and restrictions that exist between craft unions and their respective signatory employers under an MLA, except as specifically set forth in subsection (b) of this Section 3.6.

(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

slowdowns of any kind, for any reason, by the Union(s) or employees employed on the Project, at the job site of the Project because of a dispute on the Project or on any other District construction projects otherwise exempted or excepted under Article 2 from this Agreement.

5.1.2 As to employees employed on the Project, there shall be no lockout of any kind by a Contractor/Employer(s) covered by the Agreement.

5.1.3 If a master collective bargaining agreement expires before the Contractor/Employer(s) completes the performance of the Construction Contract and the Union(s) or Contractor/Employer(s) gives notice of demands for a new or modified master collective bargaining agreement, the Union(s) agrees that it will not strike on work covered under this Agreement and the Union(s) and the Contractor/Employer(s) agree that the expired master collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified master collective bargaining agreement is reached. If the new or modified master collective bargaining agreement provides that any terms of the master collective bargaining agreement shall be retroactive, the Contractor/Employer(s) agrees to comply with any retroactive terms of the new or modified master collective bargaining agreement which are applicable to employees who were employed on the projects during the interim, with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

5.1.4 Withholding employees for failure of a Contractor/Employer(s) to tender timely Trust Fund(s) contributions as required in accordance with Article 16 and/or for failure to timely meet its weekly payroll is not a violation of this Article 5; however, the Union(s) shall give the affected Contractor/Employer(s) and the District written notice seventy two (72) hours prior to the withholding of employees when repeated failure to tender Trust Fund(s) contributions has occurred. There shall be forty-eight (48) hours' notice when repeated failure to meet weekly payroll has occurred, or when paychecks are determined to be nonnegotiable by a financial institution normally recognized to honor such paychecks. For purposes of this section, repeated failure means failure to meet payroll obligations on at least 2 separate occasions. Union(s) shall stop withholding employees within 24 hours of Contractor/Employer curing its contribution or paycheck violations.

Should a Contractor/Employer(s) performing work on this Project be delinquent in the payment of Trust Fund(s) contributions required under this Agreement, the Union(s) may request that the general Contractor/Employer(s) issue joint checks payable to the Contractor/Employer(s) and the appropriate employee benefit Trust Fund(s), on behalf of the employee(s) until such delinquencies are satisfied. Any Trust Fund(s) claiming that a Contractor/Employer(s) is delinquent in its fringe benefit contributions to the Trust Fund(s) will provide written notice of the alleged delinquency to the affected Contractor/Employer(s), with copies to the General Contractor/Employer(s) and the District. The notice will indicate the amount of delinquency asserted and the period that the delinquency covers. It is agreed, however, with respect to Contractor/Employer(s) delinquent in

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.

5.2.3 The Arbitrator shall notify the parties by facsimile, email or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the Arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the Arbitrator.

5.2.4 The sole issue at the hearing shall be whether or not a violation of Article 5, Section 5.1 of the Agreement has occurred. The Arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The Arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or certified mail upon issuance. Should a party found in violation of this Article fail to comply with an Arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars ($10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

5.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 5.2.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or delivered by certified mail.

5.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

5.2.7 The fees and expenses of the Arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

6.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) performing the work involved; and such work assignments

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.

(a) A listing of each Contractor(s)'s scope of work, including the estimated start and completion dates;
(b) A listing of all sub-contractors performing work under the direction of each Contractor(s) participating in the preconstruction conference;
(c) The estimated number of craft workers required to perform the work;
(d) A copy of the signed Letter of Assent for each Contractor(s);
(e) A listing of all Sole Operators performing work on the Project and subject to Article 13.2 of this Agreement.

7.3 Review Meetings - In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the Prime Contractor(s), the Union(s), and the Contractor(s) are addressed, the Prime Contractor(s), General Contractor(s) and Secretary-Treasurer of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction.

ARTICLE 8

MANAGEMENT RIGHTS

8.1 Consistent with the MLAs, the Contractor/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the MLA shall be recognized.

ARTICLE 9

WORK RULES

9.1 Work rules shall apply as set forth in the applicable MLA.

ARTICLE 10

JOINT ADMINISTRATIVE COMMITTEE

10.1 The parties to this Agreement shall establish a four (4) person Joint Administrative Committee. This Committee shall be comprised of two (2) representatives selected by the District and two (2) representatives selected by the Council. The District and the Council shall designate alternates who shall serve in the absence of designated representatives for any purpose contemplated by this Agreement. The Joint Administrative Committee shall meet quarterly, or at the request of either Party to this Agreement to review the implementation of the Agreement and the progress of the Projects. It shall be the responsibility of the Coordinator to convene and facilitate the quarterly meetings and any other meetings requested by the Parties.

10.2 The Joint Administrative Committee shall appoint a Joint Administrative Subcommittee consisting of one District representative and one Union(s) representative for the purpose of convening to confer in an attempt to resolve a

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)

working days after such referral (or such longer time as is mutually agreed upon by the representatives on the Joint Administrative Subcommittee) to confer in an attempt to resolve the grievance. If a Union(s) is party to the grievance, regardless of which party has initiated the grievance proceeding, prior to the meeting of the Joint Administrative Subcommittee, the Union(s) shall notify its International Union Representative(s), which shall advise both parties if it intends on participating in the meeting. The participation by the International Union Representative in this Step 3 meeting shall not delay the time set herein for the meeting, unless otherwise mutually agreed by the parties. If the dispute is not resolved by the Joint Administrative Subcommittee, it may be referred within five (5) working days by either party to Step 4.

At the time a grievance is submitted under this Agreement or any MLA, the Union(s) may request that the District withhold and retain an amount from what is due and owing to the Contractor/Employer(s) against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail.

The amount shall be retained by the District until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

Step 4: In the event the matter remains unresolved in Step 3, either Party may request, within five (5) working days, that the dispute be submitted to arbitration. The time limits set out in this procedure may, upon mutual agreement, be extended. Any request for arbitration, request for extension of time limits, and agreement to extend such time limits shall be in writing.

Step 5: The Parties agree that the Arbitrator who will hear the grievance shall be selected from the following: William Riker, Robert Hirsch, and Barry Winograd. The parties shall flip a coin to determine who shall strike the first name and shall then alternately strike names from the list and the last remaining name shall be the neutral third party Arbitrator who shall resolve the dispute in a final and binding manner. Should a Party to the procedure fail or refuse to participate in the hearing, if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award. The Arbitrator's award shall be final and binding on all Parties to the arbitration. The costs of the arbitration, including the Arbitrator's fee and expenses, shall be borne equally by the Parties. The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify amend, alter, add to, or subtract from, any provisions of this Agreement.

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;

13.1.5 have the ability to perform safely the basic functions of the applicable trade; and

13.1.6 be an Oakland Resident at least six months prior to the award of the contract for which they are being dispatched.

B. Oakland Certified Small Local Contractors 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:

13.1.6 possess any license and/or certifications required by state or federal law for the Project work to be performed;

13.1.7 have worked a total of at least five hundred (500) hours in the construction craft during the prior three (3) years;

13.1.8 were on the Contractors' active payroll for at least forty-five (45) out of the one hundred forty (140) calendar days prior to the contract award.; and

13.1.9 have the ability to perform safely the basic functions of the applicable trade.

13.2 A Sole Operator, as defined in this Agreement under section 1.10, self-performing work on a covered Project shall not be required to request dispatch from the union hall with jurisdiction over the Sole Operator's work. However, if the Sole Operator hires any additional employees subsequent to starting work on a covered Project, the Sole Operator will be treated as the core employee and any subsequent employee(s) will be dispatched from the hiring hall. Before hiring an employee(s) on the Project, the Sole Operator must request permission from the JAC through the Coordinator and provide evidence of compliance with CLSB and Workers Compensation requirements. For purposes of this Agreement, Trucking Sole Operators will be treated as the core employee, but must nevertheless be dispatched from the hiring hall, will be exempt from trust fund obligations but must pay representational fees. All Sole Operators, including truckers, must sign this Agreement's Letter of Assent prior to starting work on a covered Project

13.3 The Union will first refer to such Local or Non-local Contractor/Employer(s)one employee from the hiring hall out-of-work list for each affected craft and will then refer one of the Core Employees who meet the listed qualifications. This referral process shall be repeated until such Contractor/Employer's crew requirements are met or until such Contractor has hired five (5) Core workers, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). Employees shall be laid off in the same one-for-one manner in the inverse order of their hiring. For the duration of the Contractors' work the ratio shall be maintained and when the Contractors' workforce is reduced, Employees shall be laid off in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractors signatory to a Local, Regional, and/or National collective bargaining agreement(s) with Signatory Union(s) hereto shall be bound to use the hiring hall provisions contained in the relevant MLA of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the MLAs as they relate to such Contractors.

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

District and the Unions shall make good faith efforts to assist the Contractor in reaching this goal. In cases of alleged noncompliance, the issue may be initially referred to the JAC for resolution. If the JAC can make no resolution, the issue may then be referred to the grievance procedure described in Article 11 for a final and binding determination. For purposes of resolution of any dispute arising under this Section or Article, the District shall be considered a party-in-interest with full right of participation in the arbitration proceeding.

14.4 In accordance to the MLA dispatch procedures, the Contractors must take, and require their subcontractors to take, the following good faith steps to demonstrate that they have made every effort to reach the Local Hiring Goals:

14.4.1 The Contractors shall attend the scheduled pre-job meetings identified in Article 7. At this meeting, the Contractor must submit written workforce projections and projected man-hours on a craft-by-craft basis, consistent with the Contractor's bid proposal. In the event the pre-job meeting is waived, the Contractor must submit written workforce projections to the Coordinator within five (5) days.

14.4.2 Within one week of the issuance of the Notice to Proceed, the Contractors shall meet with the District to review and approve the Contractor's compliance plan for reaching the Local Hiring and apprentice Goals, using the required compliance plan form provided by the District.

14.4.3 The Contractors shall submit copies of hiring hall dispatch requests and responses to the Coordinator within ten (10) days of Coordinator's request at any point during the execution of the Project.

14.4.4 The Contractors shall immediately contact the District if a union hiring hall dispatcher, upon request of the Contractor, is unable to dispatch local Residents.

14.4.5 The Contractors shall use the "Name Call," "Rehire" or other available hiring hall procedures to reach goals and shall provide documentation of such requests to the Coordinator upon request per subsection.

14.4.6 The Contractors shall use community based organizations from the list approved by the District and the Council as a resource for local labor resources, if a union cannot provide local Residents as requested.

14.4.7 The Contractors shall sponsor local Residents as defined herein for apprenticeship, when possible.

14.4.8 The Contractors shall maintain records for each Resident of Oakland/District who was referred but not hired along with an explanation why the worker was not hired. Upon request, such records shall be made available for review by the District, Coordinator, and JAC for the duration of the Covered Projects.

14.4.9 The Contractors shall document participation in any local employment training programs and submit documentation of such to the Coordinator within ten (10) days if requested by Coordinator.

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 hall 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.

a. For the purposes of meeting the goals established in Section 15.2 and 15.3, a Contractor may qualify for up to one-half (1/2) of the goal by employing Oakland resident apprentices, especially District graduates on non-Covered work the Contractor is performing at the same time it is working on Covered Project. In order to receive such credit, the Contractor must submit request for off-site credit along with supportive documentation such as but not limited to certified payroll reports to the Coordinator. No credit for other work will be allowed until the Contractor has received written approval from the Coordinator.

b. For the purposes of meeting the goal established in Section 15.2, District apprentices hired to perform Covered Project who have graduated and become journeypersons may continue to be counted towards the goal for the duration of the Covered Project or until such time as they are laid-off in the normal course of worker reductions at the end of the contractor's scope of work, whichever is sooner. In order to receive such credit, the Contractor must submit request for graduated apprentice credit along with supportive documentation such as but not limited to certified payroll reports to the Coordinator.

15.4. For each Covered Project, a Contractor and/or its subcontractors must hire at least one (1) Qualifying Apprentice (as described in 15.6a) for the first one million dollars ($1 million) of construction bid value. For each additional five million dollars ($5 million) of construction bid value (beyond the first $1 million), a Contractor and/or its subcontractors must hire at least one (1) additional Qualifying Apprentice.

a. A Contractor shall make a good faith effort to maximize the Covered Project hours for the Qualifying Apprentices and shall report those hours to the JAC through the Coordinator, which will evaluate those good faith efforts. A Contractor cannot hire more than one (1) Qualifying Apprentices exclusively for a single trade to satisfy the hiring goals in this section unless approved by the JAC.

b. A Contractor shall make all requests for apprentices in writing. The Contractor shall report the number of Qualifying Apprentices, date of hire and hours worked to the Coordinator as well as any information about the Contractor's hiring efforts. The Coordinator will evaluate such information to determine whether the Contractor has acted in good faith to comply with this section.

c. In accordance with the dispatch procedures of the MLAs, each Signatory Union will be responsible for dispatching/referring District residents as Qualifying Apprentices to a Contractor on a priority basis if they are available, capable and willing to work on Covered Project. If apprentice(s) are not available, a Contractor shall be free to obtain Qualifying Apprentices from the District.

d. The Coordinator will track all Contractor requests for District Qualifying Apprentices and the Union responses to such requests. Copies of the written

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..

e. If the Union fails to meet the goals of the revised Plan, the Coordinator may recommend to the JAC that the Union be referred to the grievance procedure outlined in Article 11.

f. At any time before referral arbitration, the Union will have the opportunity to make a satisfactory settlement agreement with the District.

15.7. Sanctions may be imposed for failure to meet, or demonstrate "good faith" effort to meet, any of the goals in this Article. In cases of alleged noncompliance, the issue may be referred to the JAC for resolution. If a majority of the JAC can make no resolution, the issue may then be referred to the grievance procedure of Article 11 (Grievance Procedure) for submission to an arbitrator for a final and binding determination. For purposes of resolution of any dispute arising under this Section, the District and the Coordinator shall be considered a party-in-interest with full right of participation in the arbitration proceeding.

ARTICLE 16

PRE-APPRENTICESHIP PROGRAMS

16.1 District and Unions are fully committed to workforce development, promoting local hiring and growing a pipeline of future employees who are Oakland residents to work on District capital projects funded with Oakland voter approved bonds. In order to achieve these goals the Parties hereby establishes the Construction and Building Trades Pre-Apprenticeship Program.

The Construction and Building Trades Pre-Apprenticeship Program is:

a. A pathway similar to the Oakland College & Career Readiness For All Fund, *aka* Measure N, in that it will create career based learning and real-world work experiences for Oakland students;

1. Will offer intensive, individualized support to create conditions for all students to succeed; and
2. Will ensure that students who are interested in construction and building trades have the skills and knowledge necessary for Union apprenticeship programs.

The specific goals of the Construction and Building Trades Pre-Apprenticeship Program are: to increase high school graduation rates, decrease the high school dropout rate, increase high school students' readiness to succeed in college and career and to create a local workforce to work on District capital projects.

16.2 In order to implement the Construction and Building Trades Pre-Apprenticeship Program, the District shall:

16.2.1 Establish and fund a Summer Pre-apprenticeship Internship Program and a 3-year School Year Pre-Apprenticeship Program. The goal is to create summer pre-apprenticeships for at least thirty students at workforce development in the Building Trades.

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

signatory to the MLAs with the respective trades shall continue to pay all trust fund or other contributions as outlined in such MLA's.

Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the MLAs of the respective Union(s), copies of which shall be made available upon request to the District to the extent such MLA is not inconsistent with this Agreement.

17.2 Holidays: Holidays shall be established as set forth in the applicable MLA.

ARTICLE 18

HEALTH AND SAFETY

18.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor/Employer(s), be bound by the reasonable safety rules and regulations as established by the District and Contractor/Employer(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.

18.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor/Employer(s) on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the Contractor/Employer(s).

18.3 A convenient supply of cold and potable drinking water shall be provided by the Contractor/Employer(s).

18.4 The Contractor/Employer(s) and Union(s) agree that the work site shall be a drug free workplace. Parties agree to recognize and use the Substance Abuse Prevention Program contained in each applicable Union(s)' MLA.

ARTICLE 19

HELMETS TO HARDHATS

19.1 The parties recognize a desire to facilitate the entry into the Building and Construction Trade Union(s) of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

19.2 The Union(s) and Contractor/Employer(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union(s) will give credit to such Veterans for bona fide, provable past experience.

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:

OAKLAND UNIFIED SCHOOL DISTRICT

James Harris, President, Board of Education — Date

Antwan Wilson, Superintendent — Date

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, AFL-CIO

Antigar Chavez, Secretary Treasurer

APPROVED AS TO FORM

1/28/16

Jacqueline P. Minor, Legal Advisor

SIGNATORY UNION(S)

Asbestos Workers, Local 16 — By:

Boilermakers, Local 549 — By:

Bricklayers & Allied Craftsmen, Local 3 — By:

Cement Masons, Local 300 — By:

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: _____

United Association of Journeymen and Apprentices Fitting Industry, Underground Utility & Landscape, Local 355 By: _____

United Association of Steamfitters, Pipefitters, Plumbers, & Gas Fitters, Local 342 By: _____

Northern California Carpenters Regional Council (on behalf of Carpenters, Local 713, Carpenters, Local 2236, Lathers, Local 68L, Millwrights, Local 102, Pile Drivers, Local 34) By: _____

District Council No. 16 Northern California International Union of Painters & Allied Trades (on behalf of Auto & Marine Painters, Local 1176, Carpet & Linoleum Layers, Local 12, Glaziers, Architectural Metal & Glassworkers, Local 169, Painters & Tapers, Local 3) By: _____

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

_____

OUSD PLA, page 30

E-mail and/or Fax

Motor Carrier (CA) Permit Number

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.

[Link as placeholder during RFP, to be inserted at time of execution: http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/95/2014%20amendment%20to%202008%20LSlSlrbe%20and%20Facilities%20-%20Board%20Policy%20.pdf]

EXHIBIT J

DISABLED VETERANS BUSINESS ENTERPRISE PARTICIPATION POLICY

Attached is the District's Board Policy and Administrative Regulations on its Disabled Veterans Business Enterprise Participation Policy, applicable to this Project, which Developer agrees to be bound.

DOCUMENT 00 45 05

DISABLED VETERAN BUSINESS ENTERPRISE
PARTICIPATION POLICY

OAKLAND UNIFIED SCHOOL DISTRICT
DISABLED VETERAN'S BUSINESS ENTERPRISE REGULATIONS AND LOCAL HIRING REQUIREMENTS

For Construction Contracts

PART I. GENERAL

1.01 PURPOSE

A. To be eligible for an award of a construction contract, each bidder must agree to comply with the following Local Hiring and Disabled Veterans Business Enterprise (DVBE) requirements authorized by the Oakland Unified School District ("District"). The following information is only a summary of the requirements and the Prime Contractor is responsible for and must comply with all the details contained in the District Policy.

B. The District Policy is incorporated by reference as though fully set forth herein and provides that the failure of any bidder or contractor to comply with these requirements shall be deemed a material breach of contract. Copies of the District's Local Hiring and DVBE Policy are available upon request at the Oakland Unified School District, Facilities Planning and Construction, 955 High Street, Oakland, CA, 94601.

The goals are as follows:

Disabled Veteran, 3%; Local Hiring, 50% of hours worked on a craft by craft basis; 100% of the apprenticeship hours, as set forth in Article XIV.II and XIV.IV.I of the Project Labor Agreement ("PLA") adopted by the District. The Prime Contractor's compliance with the Local Hiring and PLA Workforce Development Fund requirements shall be monitored by the PLA administrator, and compliance with the District's DVBE requirements shall be monitored by the District's Labor Compliance consultant or officer.

C. Questions regarding these Rules and Regulations and the accompanying forms for Construction Contracts should be directed to: OAKLAND UNIFIED SCHOOL DISTRICT c/o Juanita Hunter at 510-535-7044. Written responses should be addressed to: 955 High Street, Oakland, CA 94601.

D. Information from the CA Department of General Services on Disabled Veteran Business Enterprises can be found online at: http://www.pd.dgs.ca.gov/smbus

1.02 SUBMISSION OF FORMS

The following forms must be submitted with bids for projects of more than $15,000. These forms must be submitted by all Prime Contractors as specified in the Invitation for Bid. The Invitation for Bid will specify the DVBE and local hiring goals for each bid. Bids will not be opened until the submittal deadline of the DVBE forms. The District reserves the right to request information regarding the racial and ethnic composition of a contractor's work force for information and record keeping purposes only.

A. OUSD Form 1: Prime Contractor Method of Compliance

This form must be completed by the Prime Contractor detailing how he/she will comply with the District's DVBE requirement called for in the Invitation for Bid; otherwise his/her bid will be deemed non-responsive. The final determination of compliance will be based on the contract amount taking into account the District's acceptance or rejection of any alternates.

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

A complaint of discrimination or noncompliance concerning DVBE participation initiated by any party after contract award will be processed in accordance with District Policy.

1. If the District Contract Compliance Consultant determines that there is cause to believe that a contractor has failed to comply with any of these requirements, the District's Contract Compliance Consultant shall attempt to resolve the noncompliance through conciliation.

2. If the noncompliance cannot be resolved, the District's Contract Compliance Consultant shall submit to the contractor and the District Board of Education a written Finding of Non-Compliance. The contractor shall be given ten (10) calendar days to appeal the Finding to the Board of Education otherwise the Finding is final.

B. Willful or Bad Faith Noncompliance

1. If the District's Contract Compliance Consultant determines that there is cause to believe that any construction-related professional service provider, contractor, or subcontractor has failed to comply in good faith with any of these requirements of District Policy, or contract provisions pertaining to DVBE utilization, the District's Contract Compliance Consultant is empowered to conduct an investigation. After affording the contractor notice and an opportunity to be heard, the District's Contract Compliance Consultant may impose sanctions for each violation. These sanctions shall include but are not limited to:

   a. If the contractor is a DVBE, deletion from OUSD's list of DVBE certified entities and advise identified agencies of the District's actions.

   b. Declare the contractor non-responsive and ineligible to receive the award.

   c. Declare the contractor an irresponsible bidder and disqualify the contractor from eligibility for providing goods or services to the District for a period of five (5) years, with a right to review and reconsideration by the District after two (2) years upon showing of corrective action indicating violations are not likely to recur.

   d. Determine that the contractor has willfully failed to comply with the provisions of District Policy and impose as liquidated damages whichever is the greatest of:

      1) An amount equal to the contractor's net profit on the contract.
      2) Ten percent (10%) to the total amount of the contract.
      3) One thousand dollars ($1,000.00).

2. The contractor or subcontractor may within ten (10) calendar days appeal the District's Contract Compliance Consultant's decision to the District Board of Education which may sustain, reverse or modify the Contract Compliance Consultant's findings and sanctions imposed, or take such other action as will effectuate the purpose of this program.

   An appeal by an aggrieved business under this subsection shall not stay the Contract Administrator's findings.

3. The District's Contract Compliance Consultant may require such reports, information, and documentation from contractors as are reasonably necessary to determine compliance with the requirements of District Policy.

4. The District's Contract Compliance Consultant shall send a written notice to the Facilities Planning and Management Office to advise the District's Controller that a determination of bad faith non-compliance has been made and that all payments due the contractor shall be withheld

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:

Daviller-Sloan, Inc. Jake Sloan, Contract Compliance Consultant
1630 12th Street
Oakland, California 94607

Office of the State Administrator
Secretary to the Board of Education
1050 2nd Avenue, Workspace 8-237
Oakland, California 94606

OUSD FORM 1: METHOD OF COMPLIANCE
DVBE SUBCONTRACTOR/SUPPLIER CONSTRUCTION CONTRACTS.
Note: DVBE information is being collected for record keeping and informational purposes only and will not be considered in the award of contract.

DVBE DOLLAR PARTICIPATION OF BID/PROPOSAL. This section is to be completed for all Prime Contractor's bid over $15,000.00 and for all modifications to that contract. Disabled Veteran Contractors claiming preference and all other Prime Contractors must complete the following and comply with the required percentage of DVBE subcontractors or meet the good effort for bids over $75,000.

PRIME BIDDER: _____ CONTACT PERSON: _____

ADDRESS: _____

PHONE NUMBER: _____ FAX NUMBER: _____ TOTAL BID: _____

PROJECT NAME OR DESCRIPTION: _____

A. List your DVBE subcontractors/suppliers. If the subcontractor has a subordinate subcontractor, list the subordinate on the line following the subcontractor in brackets, e.g. (ABC Painting) and complete the information for both. In the appropriate DVBE column, enter the dollar amount and fill in the Ethnicity Code and Gender Code. If the subcontractor or supplier is a woman and not an ethnic minority, please add a separate page stating this fact.)
B. Enter the total in Line B for each column.
C. Enter the dollar amount of the bid to be performed by non-DVBE firms.
D. Enter the dollar amount of the bid to be performed by the Prime Contractor.
E. Enter the sum of the column totals in Line B, C, and D.

NOTE: Please be aware that the final determination of DVBE compliance is made based on the contract amount resulting from the District's acceptance or rejection of alternates.

	BASE BID/PROPOSAL					ALTERNATE #1					ALTERNATE #2				
	DVBE					DVBE					DVBE				
LIST DVBE subs/suppliers	AA W	H W	A W	NA W		AA W	H W	A W	NA W		AA W	A W	H W	NA W	
A. Subcontractor or Supplier, Location	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1.															
2.															
3.															
4.															
5.															
6.															
7.															
8.															
9.															

10.															
11.															
12.															
13.															
14.															
15.															
16.															
17.															
18.															
19.															
20.															
B. Subtotal															
C. Other Subcontractor/Supplier															
D. Prime Contractor															
E. Total Bid															

	ALTERNATE #3					ALTERNATE #4					ALTERNATE #5				
	DVBE					DVBE					DVBE				
	AA	A	H	NA		AA	A	H	NA		AA	A	H	NA	
A. Subcontractor or Supplier	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1.															
2.															
3.															
4.															
5.															
6.															
7.															
8.															
9.															
10.															
B. Subtotal															
C. Other Subcontractor/Supplier															
D. Prime Contractor															
E. Total Bid															

ETHNICITY CODES: AA = AFRICAN AMER CAN H = HISPAN C W = WOMAN
A = ASIAN NA = NATIVE AMERICAN

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above DVBE subcontractors and subcontractor's amounts as reflected in the bid documents for this project.

Owner/Authorized Representative (Signature/ Print)	Title	Date

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 on 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											

D. Total of Each Column						

PART III - SUBCONTRACTOR/SUPPLIER AND SUBORDINATE SUBCONTRACTOR/SUPPLIER CHECK LIST

Your bid/proposal should contain the following: Copy of your and your subordinate subcontractor's certification of DVBE status.

CERTIFICATION

I, _____certify that I am this firm's Chief Executive Officer. I am aware of Section 12560 et seq. of the Government Code providing for the imposition of treble damages for making false claims against the State and Section 10115.10 of the Public Contract Code making it a crime for intentionally making an untrue statement in this certification.

_____ _____

Signature of Chief Executive Officer Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/11/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Arthur J. Gallagher & Co.
Insurance Brokers of CA, Inc. LIC #0726293
1255 Battery Street, Suite 450
San Francisco CA 94111

CONTACT NAME:
PHONE (A/C, No, Ext): 415-546-9300 FAX (A/C, No): 415-536-8499
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Valley Forge Insurance Company	20508
INSURER B : Continental Insurance Company	35289
INSURER C : Travelers Property Casualty Co of America	25674
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Vila-Tulum Joint Ventures
590 S 33rd Street
Richmond, CA 94804

COVERAGES **CERTIFICATE NUMBER:** 1056925312 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	Y	Y	4028730910	4/1/2017	4/1/2018	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY	Y	Y	4028730891	4/1/2017	4/1/2018	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
							Collis Ded $500*	$Comp Ded $500*
C	UMBRELLA LIAB X OCCUR			ZUP15T7913117NF	4/1/2017	4/1/2018	EACH OCCURRENCE	$3,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$3,000,000
	DED X RETENTION $ 10,000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N / A (Mandatory in NH)						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Madison Park Academy Expansion Project, 400 Capistrano Drive, Oakland, CA 94603
ADDITIONAL INSURED(S): District, its Board Members, employees and agents, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s)

CERTIFICATE HOLDER

Oakland Unified School District
955 High Street
Oakland CA 94601

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:

   a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

   b. the construction, erection, or removal of elevators; or

   c. the ownership, maintenance or use of any elevators covered by this insurance; or

2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

   The coverage granted by this paragraph does not apply to:

   a. **Bodily injury**, **property damage** or **personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or

   b. **Bodily injury** or **property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** caused by:

a. the **Named Insured's** acts or omissions; or

b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard.**

2. **ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. **BODILY INJURY – EXPANDED DEFINITION**

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. **BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE**

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. **BROAD KNOWLEDGE OF OCCURRENCE**

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. **NOTICE OF OCCURRENCE**

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. **BROAD NAMED INSURED**

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:

a. on the effective date of this **Coverage Part**; or

CNA

CNA PARAMOUNT

General Aggregate Limit - Per Project Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. For each single construction or service project away from premises the **Named Insured** owns or rents, a separate Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

B. all medical expenses under **Coverage C**;

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Project General Aggregate Limit applicable to any other project.

II. All:

A. **damages** under **Coverage B**, regardless of the number of locations or projects involved;

B. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and

C. medical expenses under **Coverage C**, caused by accidents which cannot be attributed solely to ongoing operations at a single project,

will reduce the General Aggregate Limit shown in the Declarations.

III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular project.

IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

V. If a single construction or service project away from premises owned by or rented to the **Named Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, such project will still be deemed to be the same project.

VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

20020001040287309106723

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

VALLEY FORGE INSURANCE COMPANY
Insured Name: VILA CONSTRUCTION COMPANY, INC.

Policy No: 4028730910
Endorsement No: 3
Effective Date: 04/01/2017

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. The **WHO IS AN INSURED** section is amended to add as an **Insured** any person or organization whom the **Named Insured** is required by **written contract** to add as an additional insured on this **coverage part,** including any such person or organization, if any, specifically set forth on the Schedule attachment to this endorsement. However, such person or organization is an **Insured** only with respect to such person or organization's liability for:

   A. unless paragraph **B.** below applies,

      1. **bodily injury**, **property damage**, or **personal and advertising injury** caused in whole or in part by the acts or omissions by or on behalf of the **Named Insured** and in the performance of such **Named Insured's** ongoing operations as specified in such **written contract**; or

      2. **bodily injury** or **property damage** caused in whole or in part by **your work** and included in the **products-completed operations** hazard, and only if

         a. the **written contract** requires the **Named Insured** to provide the additional insured such coverage; and

         b. this **coverage part** provides such coverage.

   B. **bodily injury, property damage,** or **personal and advertising injury** arising out of **your work** described in such **written contract**, but only if:

      1. this **coverage part** provides coverage for **bodily injury** or **property damage** included within the **products completed operations hazard**; and

      2. the **written contract** specifically requires the **Named Insured** to provide additional insured coverage under the 11-85 or 10-01 edition of CG2010 or the 10-01 edition of CG2037.

II. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

   A. coverage broader than required by the **written contract**; or

   B. a higher limit of insurance than required by the **written contract**.

III. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury**, **property damage**, or **personal and advertising injury** arising out of:

   A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:

      1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

      2. supervisory, inspection, architectural or engineering activities; or

   B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.

IV. Notwithstanding anything to the contrary in the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS,** the Condition entitled **Other Insurance**, this insurance is excess of all other insurance available to the additional insured whether on a primary, excess, contingent or any other basis. However, if this

Policy No: 4028730910
Endorsement No:
Effective Date: 04/01/2017

Insured Name: Vila Construction Company

insurance is required by **written contract** to be primary and non-contributory, this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.

V. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. except as provided in Paragraph IV. of this endorsement, agree to make available any other insurance the additional insured has for any loss covered under this **coverage part**;
3. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
4. tender the defense and indemnity of any **claim** to any other insurer or self insurer whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph **(4)** does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires the **Named Insured** to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

A. is currently in effect or becomes effective during the term of this policy; and

B. was executed prior to:

1. the **bodily injury** or **property damage**; or
2. the offense that caused the **personal and advertising injury**

for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

Waiver of Transfer of Rights of Recovery Against Others to the Insurer Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE
Name Of Person Or Organization:
Any person or organization with whom you have agreed in writing in a contract or agreement to waive any right of recovery against such person or organization, but only if the contract or agreement: 1. Is in effect or becomes effective during the term of this policy; and 2. Was executed prior to loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

It is understood and agreed that the condition entitled **Transfer Of Rights Of Recovery Against Others To The Insurer** is amended by the addition of the following:

Solely with respect to the person or organization shown in the Schedule above, the Insurer waives any right of recovery the Insurer may have against such person or organization because of payments the Insurer makes for injury or damage arising out of the **Named Insured's** ongoing operations or **your work** done under a contract with that person or organization and included in the **products-completed operations hazard**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

Policy No: 4028730910
Endorsement No:
Effective Date: 04/01/2017

Insured Name: Vila Construction Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured:	(Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s):
Any person or organization that the Named Insured is obligated to provide Insurance where required by a written contract or agreement is an insured, but only with respect to legal responsibility for acts or omissions of a person for whom Liability Coverage is afforded under this policy.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Vila Construction Company, Inc.

Endorsement Effective Date. 04/01/2017

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
ANY PERSON OR ORGANIZATION FOR WHOM
OR WHICH YOU ARE REQUIRED BY WRITTEN
CONTRACT OR AGREEMENT TO OBTAIN THIS
WAIVER FROM US. YOU MUST AGREE TO THAT
REQUIREMENT PRIOR TO LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

AGENCY CUSTOMER ID

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page ___ of ___

AGENCY	NAMED INSURED
POLICY NUMBER	
CARRIER NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ FORM TITLE: _____

Additional Information

General Liability:
Additional Insured Endorsement Form: CNA75079XX (1-15)
Waiver of Subrogation Endorsement Form: CNA75008XX (1-15)
General aggregate Limit - Per Project Endorsement: CNA75061XX(1-15)
Waiver of Subrogation - Blanket Basis: SCIF FORM 10217 (Rev.7-2014)

Automobile Liability:

Additional Insured Endorsement Form: CA20480299
Waiver of Suboration Endorsement Form: CA04441013

The Producer will endeavor to mail 30 days written notice to the certificate holder named on the certificate if any policy listed on the certificate is cancelled prior to the expiration date.
Failure to do so shall impose no liability of any kind upon the producer or otherwise alter the policy terms.