TRACY UNIFIED SCHOOL DISTRICT

BOYS AND GIRLS CLUB/ELOP – 2026

LEASE-LEASEBACK CONSTRUCTION SERVICES

FACILITES LEASE - EXHIBIT D

TRACY
UNIFIED SCHOOL DISTRICT

TRACY UNIFIED SCHOOL DISTRICT

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS FOR THE FOLLOWING PROJECT:

BOYS AND GIRLS CLUB / ELOP Project
Contract # 25/26-001

By and between

TRACY UNIFIED SCHOOL DISTRICT

And

[DEVELOPER]

Dated as of _____, 20__

TABLE OF CONTENTS

Page

1. CONTRACT TERMS AND DEFINITIONS 1
2. [RESERVED] 10
3. ARCHITECT 10
4. CONSTRUCTION MANAGER 10
5. INSPECTOR, INSPECTIONS, AND TESTS 11
6. DEVELOPER 12
7. SUBCONTRACTORS 24
8. OTHER CONTRACTS/CONTRACTORS 25
9. DRAWINGS AND SPECIFICATIONS 26
10. DEVELOPER'S SUBMITTALS AND SCHEDULES 27
11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS 33
12. TRENCHES 36
13. INSURANCE AND BONDS 37
14. WARRANTY/GUARANTEE/INDEMNITY 38
15. TIME 39
16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES, EXCUSABLE DELAYS 41
17. CHANGES IN THE WORK 45
18. REQUESTS FOR INFORMATION 55
19. PAYMENTS 55
20. COMPLETION OF THE WORK 63
21. FINAL PAYMENT AND RETENTION 68
22. UNCOVERING OF WORK 69
23. NONCONFORMING WORK AND CORRECTION OF WORK 69
24. TERMINATION AND SUSPENSION 71
25. CLAIMS PROCESS 71
26. STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS 78
27. [RESERVED] 85
28. MISCELLANEOUS 85

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 or air 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 Allowance(s): The Allowance Item(s) identified in **Exhibit C** and included in the Guaranteed Maximum Price. Any unused portion of the Allowance will revert to the District documented by a deductive Change Order. Developer hereby authorizes the District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

1.1.3 Allowance Expenditure Directive. Written authorization for expenditure of an Allowance, if any. Developer shall not bill for or be due any portion of an Allowance unless the District has identified specific work, Developer has submitted a price for that work or the District has proposed a price for that work, the District has accepted the cost for that work, and the District has executed an Allowance Expenditure Directive incorporating that work.

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

1.1.5 Architect (or "Design Professional in General Responsible 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.

1.1.6 As-Builts. Digitally prepared and reproducible drawings using the web-based **ProCore** or **Newforma**, or comparable, 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.**

1.1.7 Burdened. The labor rate for Developer or any Subcontractor inclusive of any and all burden costs including, but not limited to, health and welfare pay, vacation and holiday pay, pension contributions, training rates, benefits of any kind, insurance of any kind, workers' compensation, liability insurance, truck expenses, supply expenses of any kind, payroll taxes, and any other taxes of any kind.

1.1.8 Change Order. A written order to 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.

1.1.9 Claim. Developer Claim within the meaning of Public Contract Code sections 9204 and/or 20104 et seq.

1.1.10 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.

1.1.11 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.

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

1.1.13 Contingency. The GMP proposal will contain, as part of the estimated cost of the Work, Project's Contingency, a sum mutually agreed upon, controlled by District, and monitored by District and Developer to cover costs that are properly reimbursable as a cost of the Work, but are not the basis for a Change Order. Project's Contingency will not be used for changes in scope or for any item that would be the basis for an increase in the GMP. Developer will provide District with a monthly accounting of charges against Project's Contingency, if applicable, with each application for payment. Any unused Project Contingency belongs to District.

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

1.1.15 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:

1.1.15.1 Non-Collusion Declaration

1.1.15.2 Iran Contracting Act Certification

1.1.15.3 Off-Road Diesel-Fueled Fleet Certification (if applicable)

1.1.15.4 Site Lease

1.1.15.5 Facilities Lease, including Exhibits A-G

1.1.15.5.1 Iran Contracting Act Certification (if applicable)

1.1.15.5.2 Federal Debarment Certification (if applicable)

1.1.15.5.3 Federal Byrd Anti-Lobbying Certification (if applicable)

1.1.15.5.4 Performance Bond

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

1.1.15.5.6 Workers' Compensation Certification

1.1.15.5.7 Prevailing Wage Certification

1.1.15.5.8 Criminal Background Investigation/Fingerprinting Certification

1.1.15.5.9 Drug-Free Workplace Certification (if applicable)

1.1.15.5.10 Tobacco-Free Environment Certification (if applicable)

1.1.15.5.11 Drug and Alcohol-Free Schools Certification (if applicable)

1.1.15.5.12 Disabled Veterans Business Enterprise Participation Certification (if applicable)

1.1.15.5.13 Roofing Project Certification (if applicable)

1.1.15.5.14 Hazardous Materials Procedures and Requirements

1.1.15.5.15 Hazardous Materials Certification (if applicable)

1.1.15.5.16 Lead-Based Materials Certification (if applicable)

1.1.15.5.17 Imported Materials Certification (if applicable)

1.1.15.5.18 Skilled and Trained Workforce Certification

1.1.15.5.19 Project Labor Agreement (if applicable)

1.1.15.5.20 Registered Subcontractors List

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

1.1.15.5.22 Guarantee Form

1.1.15.5.23 Agreement and Release of Any and All Claims

1.1.15.6 All Plans, Technical Specifications, and Drawings, including the Division of the State Architect approved versions of the foregoing

1.1.15.7 Any and all addenda to any of the above documents

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

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

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

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

1.1.19 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.

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

1.1.21 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.

1.1.22 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 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.

1.1.23 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:

> **1.1.23.1** Direct Developer to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate Developer will communicate with or provide notice to the District; and/or
>
> **1.1.23.2** Direct the Construction Manager or the Architect to communicate with or direct Developer on matters for which the Contract Documents indicate the District will communicate with or direct Developer.

1.1.24 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.

1.1.25 DSA. Division of the State Architect.

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

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

1.1.28 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.

1.1.29 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.

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

1.1.31 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.

1.1.32 Plans. See **"Drawings"**.

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

1.1.34 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.

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

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

1.1.38 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.

1.1.39 Project Labor Agreement (or "PLA" or Project Stabilization Agreement or "PSA"). 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.

1.1.40 Proposed Change Order (or "PCO"). A written request prepared by Developer requesting that the District, the Construction Manager 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.

1.1.41 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.

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

1.1.43 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."**

1.1.44 Request for Information (or "RFI"). A written request prepared by Developer requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that 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.

1.1.45 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.

1.1.46 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").

1.1.47 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.

1.1.48 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.

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

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

1.1.51 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.

1.1.52 State. The State of California.

1.1.53 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.

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

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

1.1.56 Surety. The person, firm, or corporation that executes as surety 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.

1.1.57 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; Venue

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.

To the fullest extent permitted by California law, the county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

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 ensure 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, 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 reviewed, 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 five (5) days' 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 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.

1.8.10 [Reserved]

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 ensure 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, change order requests and/or proposed change orders.

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 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: 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 within the Contract Documents 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 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 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 Developer. 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, forty-eight (48) hours prior to the inspection of the material that needs to be tested and, at a minimum, seventy-two (72) hours prior to any special or off-site inspection.

5.2.3 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 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, except those inspections performed at Developer's request and expense. 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 Developer performs Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be borne by Developer and may be invoiced to 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 represents and warrants that Developer is an independent do or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Developer understands and agrees that it and all of its employees and its Subcontractors shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Developer shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Consultant's employees. Developer is and shall at all times be deemed be wholly responsible for the manner in which it, its agents, 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. District shall be permitted to monitor 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 Developer and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7.

6.1.5 [Reserved]

6.1.6 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.

6.1.7 [Reserved]

6.1.8 If Developer intends to make any change in the name or legal nature of the Developer's entity, Developer must 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 this Contract.

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 Developer, to whom the District does not object and whom shall be fluent in English, written and verbal.

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

6.3.3 Developer acknowledges the quality and qualifications of the Key Personnel were important factors in District's selection of Developer for the Project. Developer and District agree that the personal services of the Key Personnel are a material term of the Contract Documents. Developer and District agree further that the substitution or removal or change in role or level of effort of such Key Personnel would result in damages to the District, the measure of which would be impractical or extremely difficult to fix. In lieu such damages, District and Developer have agreed to liquidated damages as described below:

6.3.3.1 Before commencing the Work herein, Developer shall give written notice to District of Developer's Key Personnel.

6.3.3.2 Key Personnel shall be the same as those individuals identified in Developer's response to the District's RFP.

6.3.3.3 For any substitution of any Key Personnel individual before the end of the individual's Project commitment period provided in Developer's Key Personnel staffing schedule, District may assess once, and Developer shall accept, liquidated damages in the amount of six (6) times the gross monthly salary for each substituted Key Personnel.

6.3.4 Developer's Key Personnel shall not be changed except with prior written notice to, and approval by, District.

6.3.5 If any of Developer's Key Personnel prove to be unsatisfactory to Developer, or to District, any of the District's employees, agents, the Construction Manager, or the Architect, the unsatisfactory Key Personnel shall be replaced. However, Developer shall immediately notify District in writing before any change occurs, but no less than two (2) business days prior. Any replacement of Key Personnel shall be made promptly and must be satisfactory to the District. Developer's Key Personnel shall each represent Developer, and all directions given to Key Personnel shall be as binding as if given to Developer.

6.3.6 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.

6.3.7 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.

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

6.3.7.1.1 Name of contractor

6.3.7.1.2 Name of employee

6.3.7.1.3 Contractor's address and phone number

6.3.7.2 Badges are to be worn when 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.

6.3.7.3 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 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 Fingerprinting. Developer shall comply with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, Subcontractor(s), and Subcontractors' employees. Developer shall not permit any employee to have any contact with District pupils until such time as Developer has verified in writing to the governing board of the District, (A) that such employee has not been convicted of a violent or serious felony, as defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). Developer shall fully complete and perform all tasks required pursuant to the Criminal Background Investigation/ Fingerprinting Certification.

6.5 Field Office

6.5.1 Developer shall provide on the Site a temporary office.

6.6 Purchase of Materials and Equipment

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 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 Developer's employee(s) who are present on Site, and must include, at a minimum, the following information:

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

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

6.7.2.1.3 The weather conditions on that day.

6.7.2.1.4 A list of all Subcontractor(s) working on that day, including DIR registration numbers, Subcontractor employees working, and hours of work.

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, and verification that all

materials, supplies, and equipment comply with the Contract Documents and are properly stored.

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

6.7.2.1.9 Daily verification the Project is properly secured from the public and unauthorized entry.

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 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. 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. In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to ascertain compliance with applicable laws, building codes or regulations. However, nothing in this provision shall abrogate Developer's responsibilities for discovering and reporting any error, inconsistency, or omission pursuant to the Contract within Developer's standard of care including, without limitation, any applicable laws, ordinance, rules, or regulations. Following receipt of written notice from Developer, the District and/or Architect shall inform Developer what action, if any, Developer shall take with regard to such discrepancies.

6.9.4 All costs caused by noncompliant, defective, or delayed Work shall be borne by Developer, inclusive of repair work. Schedule delays resulting from unauthorized work shall be Developer's responsibility.

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

6.11.1 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. 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.

6.11.2 General Permit For Storm Water Discharges Associated With Construction and Land Disturbance Activities.

6.11.2.1 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 pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as Permit Registration Documents ("PRDS") with the Regional Water Control Board ("Storm Water Pollution Prevention Plan" or "SWPPP").

6.11.2.2 Developer shall comply with any District SWPPP that is approved by the District and applicable to the Project, at no additional cost to the District. Developer shall pay any fees and any penalties that may imposed by a regulatory agency for its non-compliance with the SWPPP during the course of Work.

6.11.2.3 Developer shall provide a Qualified Storm Water Practitioner ("QSP") at no additional cost to the District, who shall perform on-site inspections and implement and monitor any and all SWPPP requirements applicable to the Project, including required visual observations, sampling, analysis, reporting and record keeping, including of Total Maximum Daily Loads ("TMDL") of pollutants and construction dewatering and discharge, and Best Management Practices ("BMPs").

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 Developer has reason to believe that the required design, process, or product is an infringement of a patent or copyright, 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 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 International 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 or local utility 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.

6.13.5 [Reserved]

6.14 Safety/Protection of Persons and Property

6.14.1 Developer will be solely and completely responsible for conditions of the 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 Developer to provide safe access for staff and students at any time, and to provide barricades, sound walls, signage, fencing, and other reasonably necessary protective measures, as necessary, to protect staff and students during construction.

6.14.3 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.

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

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

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

6.14.7 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.

6.14.8 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.

6.14.9 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.

6.14.10 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.

6.14.11 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.

6.14.12 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.

6.14.13 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.

6.14.14 All salvage materials will become the property of 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.

6.14.15 All connections to public utilities and/or existing on-site services, including, without limitation, internet, phone, and data connections, 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.

6.14.16 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.

6.14.17 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. 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, 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.

6.14.18 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.

6.14.19 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.

6.14.20 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. Developer is also responsible for ensuring workers refrain from wearing inappropriate clothing and/or logos on the Project. District may require Developer to temporarily or permanently remove non-complying persons from Project Site.

6.14.21 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.

6.14.22 In the event that 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. 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 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 forty-eight (48) 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 Developer's increased hours, or evening and/or weekend work.

6.16 Cleaning Up

6.16.1 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. Developer must erect the necessary warning signs and barricades to ensure the safety of all school occupants. 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.

6.16.2 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 continued operations. Developer shall comply with all related provisions of the Specifications.

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

6.16.4 Should Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District may, at its sole discretion, 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.

6.17 No Relief from Obligations Based on Review by Other Persons

6.17.1 Developer shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of the District, Architect, Construction Manager, Project Inspector, or DSA or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit /interconnection approvals.

7. Subcontractors

7.1 Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors as indicated in 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 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 Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

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

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

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 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, 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 operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or Premises 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 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 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 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 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 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 shall be responsible for the development of schedule, cost and resource loading of the schedule, monthly payment requests, and project status reporting requirements of the Contract shall employ computerized Critical Path Method ("CPM") scheduling ("CPM Schedule"). CPM Schedule shall be cost loaded based on Schedule of Values as approved by District.

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

10.1.4 The 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.

10.1.5 The District shall have the right at any time to discuss with Developer revisions to 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 All schedules must be approved by the District before Developer can rely on them as a basis for payment.

10.1.7 Within TEN (10) calendar days after the date of the Notice to Proceed with Construction (unless otherwise specified in the Specifications), 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:

10.1.7.1 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. The Preliminary Schedule shall be time scaled, cost and resource (labor and major equipment) loaded. Accepted cost and resource loaded schedule will be used as basis for monthly progress payments until acceptance of the approved Construction Schedule.

10.1.7.1.1 The District is not required to approve a preliminary schedule of construction with early completion, i.e., one that shows early completion dates for the Work and/or milestones. Developer shall not be entitled to extra compensation if the District approves a Construction Schedule with an early completion date and Developer completes the Project beyond the date shown in the schedule but within the Contract Time. A Construction Schedule showing the Work completed in less than the Contract Time, the time between the early completion date and the end of the Contract Time shall be Float.

10.1.7.1.2 The Developer shall make corrections to schedule necessary to comply with Contract requirements and shall adjust schedule to incorporate any missing information requested by District. Developer shall resubmit Preliminary Schedule if requested by District.

10.1.7.2 Preliminary Schedule of Values

A preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Guaranteed Maximum 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:

10.1.7.2.1 Divided into at least the following categories:

10.1.7.2.1.1 Overhead and profit

10.1.7.2.1.2 Supervision

10.1.7.2.1.3 General conditions

10.1.7.2.1.4 Layout

10.1.7.2.1.5 Mobilization

10.1.7.2.1.6 Submittals

10.1.7.2.1.7 Bonds and insurance

10.1.7.2.1.8 Close-out/Certification documentation

10.1.7.2.1.9 Demolition

10.1.7.2.1.10 Installation

10.1.7.2.1.11 Rough-in

10.1.7.2.1.12 Finishes

10.1.7.2.1.13 Testing

10.1.7.2.1.14 Punch list and District acceptance

10.1.7.2.2 And also divided by each of the following areas:

10.1.7.2.2.1 Site work

10.1.7.2.2.2 By each phase and/or building, as applicable

10.1.7.2.2.3 By each floor

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

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

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

10.1.7.2.3.3 Bonds and insurance combined to equal not more than **2%**

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

10.1.7.2.4 Notwithstanding any provision of the Contract Documents to the contrary, payment of 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.

10.1.7.2.5 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. For example, without limiting the foregoing, Developer shall not "front-load" the preliminary schedule of values with dollar amounts greater than the value of activities performed early in the Project.

10.1.7.2.6 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 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.

10.1.7.2.7 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 Developer without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District.

10.1.7.3 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.

10.1.7.4 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 may be reviewed by District in **ProCore** or **Newforma**, or comparable and shall be forwarded to the Architect 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 ninety (90) days after the Notice to Proceed with Construction.

10.1.7.5 Safety Plan

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

10.1.7.5.1 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").

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

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

10.1.7.6 Update Registered Subcontractor List

The name, address, telephone number, facsimile number, California State Contractors License number, classification, DIR registration number, and monetary value of all Subcontracts of any tier 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 as well as updating the Registered Subcontractors List. 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 native format (e.g., Microsoft Project or Primavera), approved in advance by District.

10.2.4 A meeting will be held on approximately the twenty-fifth (25th) of each month to review the schedule update submittal and progress payment application. These meetings are considered a critical component of overall monthly schedule update submittal and Developer shall have appropriate personnel attend. At a minimum, these meetings shall be attended by Developer's General Superintendent and Scheduler.

10.2.5 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 within five (5) working days until approved by the District.

10.2.6 District shall have the right at any time to discuss with Developer revisions to 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.

10.2.7 All schedules must be approved by the District before Developer can rely on them as a basis for payment. District shall use best efforts to approve all submittals and schedules on or before fourteen (14) days after presentation of the same from Developer, providing there are no extenuating circumstances, and no such approval shall be unreasonably withheld by District.

10.2.8 Neither updating, changing or revising of any report, curve, schedule, or narrative submitted to District by Developer under this Contract, nor District's review or acceptance of any such report, curve, schedule or narrative shall have the effect of amending or modifying in any way the Completion Date or milestone dates or of modifying or limiting in any way Developer's obligations under this Contract.

10.3 Weekly Schedule Report

At the Weekly Progress Meeting, the Developer shall provide and present a time-scaled three (3) week look-ahead schedule that is based and correlated by activity number to the current schedule (i.e., Initial, Original CPM, or Schedule Update).

10.4 Daily Construction Reports

On a daily basis, Developer shall submit a daily activity report to District for each workday, including weekends and holidays when worked. Developer shall develop the daily construction reports on a computer-generated database capable of sorting daily Work, manpower, and man-hours by Developer, Subcontractor, area, sub-area, and Change Order Work. Upon request of District, Developer shall furnish a USB flash drive of this database. Developer shall obtain District's written approval of the daily construction report database format prior to implementation. At minimum, Developer shall include in the reports:

10.4.1 Project name and Project number.

10.4.2 Developer's name and address.

10.4.3 Weather, temperature, and any unusual site conditions.

10.4.4 Brief description and location of the day's scheduled activities and any special problems and accidents, including Work of Subcontractors.

10.4.5 Descriptions shall be referenced to CPM scheduled activities.

10.4.6 Worker quantities for its own Work force and for Subcontractors of any tier.

10.4.7 Equipment, other than hand tools, utilized by Developer and Subcontractors.

10.5 Material Safety Data Sheets (MSDS)

Developer is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Site for any material requiring a Material Safety Data Sheet per the federal "Hazard Communication" standard, or employees' "right to know" law. 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.

10.4 Submittals

10.4.1 Architect's favorable review shall neither be construed as a complete check nor relieve Developer, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless Developer has, in writing, called Architect's attention to the deviations at the time of submission and the Architect has given specific written response. "Favorable review" shall mean merely that Architect has no objection to Developer using, upon Developer's own full responsibility, plan or method of Work proposed, or furnishing materials or equipment proposed.

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 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 has made whatever tests Developer deems appropriate to determine underground condition of soil. Although any such report is not a part of this Contract, recommendations from the report may be included in the Drawings, Specifications, or other Contract Documents. It is

Developer's sole responsibility to thoroughly review all Contract Documents, Drawings, and Specifications.

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. District shall provide Developer adequate advance notice for access to active construction zones such that Developer may provide for safety measures to District and representatives.

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 or licensed land surveyor 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 or licensed land surveyor.

11.4.2 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 or licensed land surveyor to determine locations of construction, grading, and site work as required to perform the Work.

11.8 Regional Notification Center

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 Developer unless an inquiry identification number has been assigned to Developer or any Subcontractor and 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 Developer. Any delays caused by failure to make appropriate notification shall be at the sole risk of 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 discovered facilities shall be borne by 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 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, 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 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 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

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

12.5.1.1 Material that 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 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 Developer whether the conditions materially differ or cause a decrease or increase in Developer's cost of, or time required for, performance of any part of the Work, 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. 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

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 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 **TWO (2) years** 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's governing board 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 District operations, 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 Contract.

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 with Construction

15.1.1 District may issue a Notice to Proceed with Construction ("NTP 2") within ninety (90) days from the date of the Notice of Award after Guaranteed Maximum Price. Once Developer has received the Notice to Proceed with 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 with Construction beyond ninety (90) days from the date of the Notice of Award after Guaranteed Maximum Price, it is expressly understood that with reasonable notice to Developer, the District may postpone issuing the Notice to Proceed with 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 with Construction.

15.1.3 If Developer believes that a postponement of issuance of the Notice to Proceed with 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 Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer in compliance with the time extension request procedures herein 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 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 Exceeds twelve (12) days of delay per year.

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 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 with 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, Developer confirms that the Contract Time is a reasonable period for performing the Work.

15.4.2 No Commencement Without Insurance or Bonds

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

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

16. Extensions of Time – Liquidated Damages, Excusable Delays

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 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 the Work which are not the fault of Developer or its Subcontractors, including without limitation, adverse weather delays, strikes, 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, including a Force Majeure event, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the cause and effect ("Notice of Delay"). If Developer fails to provide its written Notice of Delay within this timeframe, Developer waives, releases, and discharges any right to assert or claim any entitlement to an adjustment to the Guaranteed Maximum Price and/or the Contract Time based on circumstances giving rise to the asserted delay. 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's Notice of Delay and request for a time extension pursuant to subparagraph 16.2 is a condition precedent to Developer's submittal of and/or entitlement to a claim pursuant to Article 25 of these Construction Provisions. Developer shall notify the District pursuant to the Claims Process 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 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, including without limitation, the time requirements set forth in subsection 17.5, below. When requesting time, requests must be submitted with full justification and documentation, including both a written narrative and a schedule diagram depicting how the changed Work affects other schedule activities. The schedule diagram shall show how the Developer proposes to incorporate the changed Work in the schedule and how it impacts the current schedule-update critical path. If 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 request for a time extension 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 ("Time Impact Analysis"). Such Time Impact Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule and main sequence of schedule activities to enable District to evaluate the impact of changed Work to the scheduled critical path. (This information must be provided for any portion of any delay of seven (7) days or more.) The Developer shall be responsible for all costs associated with the preparation of Time Impact Analyses.

16.2.4 A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay to recover the lost time within seven (7) calendar days. As part of this submittal, the Developer shall provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, the Developer shall provide a schedule diagram comparing the original sequence to the revised sequence of work. The revisions shall not be incorporated into any schedule update until the revisions have been reviewed by District. At District's discretion, the Developer can be required to provide Subcontractor certifications for revisions affecting said Subcontractors.

16.2.5 Developer must comply with requirements in subsection 16.2 for a Notice of Delay and supporting justification notwithstanding if Developer contends the specific delay period is unknown and continuing. When submitting a Notice of Delay and supporting justification, Developer must provide an estimated delay duration to critical path activities at the time the Notice of Delay and supporting justification is required to be submitted. Failure of the Developer to perform in

accordance with the current schedule update shall not be excused by submittal of a Notice of Delay. If Developer contends the delaying event(s) are continuing, Developer must update monthly the estimated delay period with supporting justification.

16.2.6 Developer's failure to timely submit a written Notice of Delay and/or provide the justification required in subparagraph 16.2 shall constitute Developer's waiver of any right to later submit a Proposed Change Order or pursue a Claim on the circumstances giving rise to the request, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits because the Developer will not have satisfied a condition precedent or exhausted administrative remedies required to show entitlement to a Contract Time adjustment. Developer acknowledges that these written notices and justification requirements are critically important to District's Work, Project management, and evaluating potential options and alternatives to implement mitigation efforts to reduce or eliminate additional Project costs and delays.

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.

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

16.3.2.1 The District is responsible for the delay;

16.3.2.2 The delay is unreasonable under the circumstances involved;

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

16.3.2.4 The delay could not have been avoided or mitigated by reasonable diligence; and

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

16.3.3 Where an event for which District is responsible impacts the projected Completion Date, the Developer shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact can be mitigated. The Developer shall also include a detailed cost breakdown of the labor, equipment, and material the Developer would expend to mitigate District-caused time impact. The Developer shall submit its mitigation plan to District within fourteen (14) calendar days from the date of

discovery of the impact. The Developer is responsible for the cost to prepare the mitigation plan.

16.3.4 Where a change in the Work extends the Contract Time, Developer may request and recover additional, actual direct costs, provided that Developer can demonstrate such additional costs are:

16.3.4.1 Actually incurred performing the Work;

16.3.4.2 Not compensated by the Markup allowed; and

16.3.4.3 Directly result from the extended Contract Time.

16.3.5 Developer shall comply with all required procedures, documentation and time requirements in the Contract Documents. Developer may not seek or recover such costs using formulas (e.g. Eichleay, labor factors). No time will be granted under this Contract for cumulative effect of changes.

16.4 Force Majeure

"Force Majeure" means any event or circumstance unknown at the time of contracting that is beyond the parties' control and makes performance of the contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the party's intervention as could not have been prevented by the exercise of prudence, diligence, and care, by providing prompt notice to the other Party, including full particulars of such event, of its inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of transportation facilities, lock out, or commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. No obligation that arose before the Force Majeure event that could and should have been fully performed before such Force Majeure event is excused as a result of such Force Majeure event.

16.5 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 Developer, but its use shall be determined solely by the District.

17. Changes in the Work

17.1 No Changes without Prior 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 A Change Order or Construction Change Directive will become effective when approved by the Board, notwithstanding that Developer has not signed it. A Change Order or Construction Change Directive will become effective without Developer's signature provided District indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the Guaranteed Maximum Price or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payments and Claims Process provisions herein.

17.1.5 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 Price Request

17.3.1 Definition of Price Request

A Price Request is a written request prepared by the Architect requesting the Developer to submit to the District and the Architect an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.

17.3.2 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 herein. The Developer shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.4 Change Orders

17.4.1 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), Developer, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

17.4.1.1 A description of a change in the Work.

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

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

17.5 Proposed Change Order

17.5.1 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.

17.5.2 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.

17.5.3 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 critical path in the

Construction Schedule as defined in the Contract Documents. Developer shall justify the proposed change in time by submittal of a schedule analysis that accurately shows the actual impact, if known, or the estimated impact if unknown, of the change on the critical path of the Construction Schedule ("Time Impact Analysis"). If Developer fails to request a time extension in a PCO, including the Time Impact Analysis, and/or fails to comply with these Construction Provisions including, without limitation, Articles 15, 16, or 17, then Developer is thereafter precluded from requesting, and waives any right to request, an adjustment to the Contract Time or Guaranteed Maximum Price relating to the subject matter of the PCO. 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," or otherwise not specifically identified, is not permitted and shall also constitute a waiver of any right to request additional time and/or claim a delay.

17.5.4 Allowances

If there is an Allowance, then Developer shall not bill for or be due any portion of an Allowance unless the District has identified specific work, Developer has submitted a price for that work or the District has proposed a price for that work, the District has accepted the cost for that work, and the District has executed an Allowance Expenditure Directive incorporating that work. Allowance Expenditure Directives shall be based on Developer's costs, without overhead and profit for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental will be included in Allowance Expenditure Directive authorizing expenditure of funds from the Allowance. No overhead and profit shall be added to the Allowance Expenditure Directive unless Allowances are included in the original Guaranteed Maximum Price after mark-up for overhead and profit and bond and insurance.

Any unused portion of the Allowance, and mark-up if applicable, will revert to the District documented by a deductive Change Order. Developer authorizes the District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

17.5.5 Unknown and / or Unforeseen Conditions

Separate from what is provided in the Allowance, if requests 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 and that the condition(s) were reasonably 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.

17.5.6 Time to Submit Proposed Change Order

Developer shall submit its PCO, using the Proposed Change Order Form, within five (5) working days of the date Developer discovers, or reasonably should have discovered, the circumstances giving rise to the PCO, unless additional

time to submit a PCO is granted in writing by the District. Time is of the essence in Developer's submission of PCOs so that the District can promptly investigate the basis for the PCO. Accordingly, if Developer fails to submit its PCO within this timeframe, Developer waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the Guaranteed Maximum Price and/or Contract Time based on circumstances giving rise to the PCO.

17.5.7 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 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.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of Developer's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project including, without limitation, cumulative impacts. 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.

17.6 Format for Proposed Change Order

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

	WORK PERFORMED OTHER THAN BY DEVELOPER	**ADD**	**DEDUCT**
(a)	**Material** (attach suppliers' invoice or itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, for example, payroll taxes, fringe benefits, etc.)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Overhead and Profit for any and all Tiers of Subcontractors**, the total not to exceed ten percent (10%) of Item (d)		
(f)	**Subtotal**		
(g)	**Add Overhead and Profit for Developer**, not to exceed five percent (5%) of Item (f)		
(h)	**Subtotal**		
(i)	**Add Bond and Insurance**, not to exceed two and twenty-six percent (2.26%) of Item (h)		
(j)	**TOTAL**		
(k)	**Time** (zero unless indicated; "TBD" not permitted)	**_____ Calendar Days**	

	WORK PERFORMED BY DEVELOPER	**ADD**	**DEDUCT**
(a)	**Material** (attach itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully Burdened, and specify the hourly rate for each additional labor burden, for example, payroll taxes, fringe benefits, etc.)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Overhead and Profit for Developer**, not to exceed fifteen percent (15%) of Item (d)		
(f)	**Subtotal**		
(g)	**Add Bond and Insurance**, not to exceed two and twenty-six percent (2.26%) of Item (f)		
(h)	**TOTAL**		
(i)	**Time** (zero unless indicated; "TBD" not permitted)	**_____ Calendar Days**	

17.6.2 Mandatory Use of Forms

Developer shall only submit PCOs by completing the Proposed Change Order Form. Developer acknowledges and agrees that use of this specific and consistent format is essential to District's evaluation of PCOs. Accordingly, Developer waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the Guaranteed Maximum Price and/or Time for any purported PCO that does not comply with the Proposed Change Order Form.

17.6.3 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 the actual cost, use of any formulas (e.g. labor factors) is not allowed, not to exceed prevailing wage rates established by the bid advertisement date or when the Contract was awarded, whichever is applicable, in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, fully Burdened. 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, including but not limited to the cost for the job superintendent. If applicable, District will pay Developer the reasonable costs for room and board, supported with appropriate backup documentation, without markup for profit or overhead as provided by U.S. General Services Administration per diem rates for California lodging, meals and incidentals, https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup.

17.6.4 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 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 Developer for materials in connection with any change in the Work are excessive, or if 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 Developer shall not be compensated for the costs of furnishing such materials or any mark-up thereon.

17.6.5 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 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 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 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 Developer incidental to the use of the Equipment.

17.6.6 General Conditions Cost.

The phrase "General Conditions Cost" shall mean, other than expressly limited or excluded herein, the costs of Developer during the construction phase, including but not limited to: payroll costs for project manager for Work conducted at the Site, payroll costs for the superintendent and full-time general foremen, workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of consultants not in the direct employ of Developer or Subcontractors, and fees for permits and licenses.

17.6.7 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 conditions, field and home office expenses.

17.7 Change Order Certification

17.7.1 All Change Orders and PCOs must include the following certification by Developer, either in the form specifically or incorporated by this reference:

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 Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project, including, without limitation, cumulative impacts. 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.

17.7.2 Accord and Satisfaction: Developer's execution of any Change Order shall constitute a full accord and satisfaction, and release, of all Developer (and if applicable, Subcontractor) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without

limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim.

17.7.3 Mandatory Use of Forms: Developer shall only submit Change Orders by completing the Change Order Form. Developer acknowledges and agrees that use of this specific and consistent format is essential to District's processing of Change Orders. Accordingly, Developer waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the Guaranteed Maximum Price and/or Time for any change that does not comply with the Change Order Form.

17.8 Determination of Change Order Cost

17.8.1 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:

17.8.1.1 District acceptance of a COR or PCO.

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

17.8.1.3 By agreement between District and Developer.

17.9 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. Unit Prices, if any, may be used in District's discretion in calculating reasonable value. If Developer offers a proposed amount for a deductive Change Order(s) for work performed, Developer shall include a credit for total profit and overhead less proof of expended costs related to the deleted work with the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a credit for total profit and overhead less proof of expended costs related to the deleted work with the Change Order(s). Any deviation from this provision shall not be allowed.

17.10 Addition or Deletion of Alternate Bid Item(s)

If Developer's 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 the Guaranteed Maximum Price is agreed upon. 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 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. If days are not allocated in the Contract Documents, the Contract Time shall be equitably adjusted.

17.11 Discounts, Rebates, and Refunds

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 Developer, 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 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 Payments and Claims Process 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 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 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 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 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 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, 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. Developer will not be compensated for force account work in the event that Developer fails to timely notify the District regarding the commencement of force account work or exceeding the force account budget.

17.13.6 Developer shall diligently proceed with the work, and on a daily basis, submit a daily force account report using the Daily Force Account Report form no later than 5:00 p.m. each day. 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 IOR or District representative 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 Developer for its records. The District will not sign, nor will Developer receive compensation for, work the District cannot verify. 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 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, Developer's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

17.14 Accounting Records

With respect to portions of the Work performed by Change Orders and Construction Change Directives, 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 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 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 Guaranteed Maximum Price shall be final, conclusive, dispositive and binding upon Developer.

17.15 Notice Required

If 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 Process. 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.

17.16 Applicability to Subcontractors

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

17.17 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.

17.18 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 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. 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 Developer may be responsible for any costs incurred for professional services that District may deduct from any amounts owing to 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 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 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 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 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 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 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 Developer of the following:

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. 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 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 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.

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

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

19.2.1.1.16.1 Developer and/or its Subcontractor(s) provide electronic CPRs directly to the DIR on no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project for any journeyman, apprentice, worker or other employee was employed in connection with the Work, or within ten (10) days of any request by the District or the DIR to the requesting entity; 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 Developer's payment.

19.2.1.1.17 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 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 Preliminary Construction Schedule for the first ninety (90) days.

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

19.2.2.1.10 All bonds and insurance endorsements; and

19.2.2.1.11 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 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 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 Tenant Improvement Payment (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 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 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 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 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 requirements of Public Contract Code section 2600 et seq. ("Skilled and Trained Workforce Requirements").

19.4.1.4 Liquidated damages assessed against Developer.

19.4.1.5 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 Developer.

19.4.1.8 Failure to store and properly secure materials.

19.4.1.9 Failure of 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 Developer to maintain As-Built Drawings.

19.4.1.11 Erroneous estimates by 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 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 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 Allowing an unregistered subcontractor, as described in Labor Code section 1725.5, to engage in the performance of any work under this Contract.

19.4.1.17 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.

19.4.1.18 Failure to properly maintain or clean up the Site.

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

19.4.1.20 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.

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

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

19.4.1.23 Failure to pay Subcontractor(s) or supplier(s) as required by law and Developer's subcontract agreement and by the Contract Documents; 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 After prior written notice to Developer with details regarding the District's proposed application of withheld amounts, 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 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 (up to one hundred fifty percent (150%) 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 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, Developer shall pay to each Subcontractor, out of the amount paid to Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. 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 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 reasonably 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 Developer.

20.2 Close-Out/Certification Procedures

20.2.1 Punch List

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"). 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 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, electric, phone, and internet 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 shall legibly mark each item to record actual construction, including:

20.2.2.2.1.1 Measured depths of foundation in relation to finish floor datum

20.2.2.2.1.2 Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permit surface improvements

20.2.2.2.1.3 Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work

20.2.2.2.1.4 Field changes of dimension and detail

20.2.2.2.1.5 Details not on original Contract Drawings

20.2.2.2.1.6 Changes made by modification(s)

20.2.2.2.1.7 References to related Shop Drawings and modifications.

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 deliver the same to Architect in a form acceptable to the Architect as part of closeout.

20.2.2.3 Construction Storm Water Permit, if applicable

Developer shall submit to District all electric and hard copy records required by the Construction Storm Water Permit, if applicable, within seven (7) days of Completion of the Project.

20.2.3 Spare Parts and Maintenance Manuals

20.2.3.1 Developer shall provide products, spare parts, maintenance, and extra materials in quantities specified in the Specifications and in Manufacturer's recommendations.

20.2.3.2 Developer shall provide District with all required Operation and Maintenance Data at one time. Partial or piecemeal submissions of Operation and Maintenance Data will not be accepted.

20.2.4 Instruction of District Personnel

20.2.4.1 Before final inspection, at agreed upon times, Developer shall instruct District's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems.

20.2.4.2 For equipment requiring seasonal operation, Developer shall perform instructions for other seasons within six months or by the change of season.

20.2.4.3 Developer shall use operation and maintenance manuals as basis for instruction. Developer shall review contents of manual with personnel in detail to explain all aspects of operation and maintenance.

20.2.4.4 Developer shall prepare and insert additional data in Operation and Maintenance Manual when the need for such data becomes apparent during instruction.

20.2.5 Source Programming

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

20.2.6 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 District 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, 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, including, without limitation, security system, data, fire alarm, 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 Replace filters of operating equipment.

20.3.3.1.6 Painting and special finishes complete.

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

20.3.3.1.8 Tops and bottoms of doors sealed.

20.3.3.1.9 Floors waxed and polished as specified.

20.3.3.1.10 Carpeted and soft surfaces vacuumed.

20.3.3.1.11 Broken glass replaced and interior and exterior glass and all surfaces exposed to view cleaned.

20.3.3.1.12 Equipment and fixtures cleaned to a sanitary condition.

20.3.3.1.13 Grounds cleared of Developer's equipment, raked clean of debris, and remove waste and surplus materials, rubbish, and construction facilities from the Site and surrounding areas.

20.3.3.1.14 Site cleaned, paved areas swept, and clean landscaped surfaces raked.

20.3.3.1.15 Roofs, gutters, down spouts, and drainage systems cleaned of debris.

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

20.3.3.1.17 Temporary labels, tape, stains, and foreign substances removed, transparent and glossy surfaces polished,

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

20.3.3.1.19 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 Developer or 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 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 Process 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, 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 District's acceptance of the Work not complying with the requirements of the Contract Documents.

21. Final Payment and Retention

21.1 Final Payment

Upon receipt of a final Application for Payment from Developer, the Architect will notify the District whether the Work is complete so that joint inspection of the Work can be scheduled. Thereafter, the District shall jointly inspect the Work and either accept the Work as complete or notify the Architect and Developer in writing of reasons why the Work is not complete. Upon District's acceptance of the Work of 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 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 Developer.

21.2.5 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 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 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 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 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 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 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, 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. 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, 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 District's 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 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 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 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 Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice 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 Obligation to File Claims for Disputes

25.1.1 Should Developer otherwise seek extra time or compensation for any reason whatsoever, then Developer shall first follow procedures set forth in the Contract Documents including, without limitation, Articles 15, 16 and 17, all of which are conditions precedent to submitting a Claim pursuant to Article 25. A Notice of Delay or Proposed Change Order are less formal procedures that proceed the formal claim and do not constitute a Claim. A Claim also does not include correspondence, RFIs, vouchers, invoices, progress payment applications, or other routine or authorized form of requests for progress payments in compliance with the Contract. If a dispute remains, then Developer shall give written notice to District that expressly invokes this Article 25 within the time limits set forth herein.

25.1.2 Developer's sole and exclusive remedy for a Dispute is to file a written claim setting forth Developer's position as required herein within the time limits set forth herein.

25.2 Duty to Perform during Claim Process

Developer and its subcontractors shall continue to perform its Work under the Contract, including the Disputed Work, 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.

25.3 Definition of Claim

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

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

25.3.1.2 Payment by the District of money or damages arising from work done by, or on behalf of, 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

25.3.1.3 An amount of payment disputed by the District.

25.4 Claims Presentation

25.4.1 Form and Contents of Claim

25.4.1.1 If Developer intends to submit a Claim for an increase in the Guaranteed Maximum Price and/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 ("Notice of Potential Claim") in writing, specifically identifying Developer is invoking this Article 25 Claims Presentation. The Notice of Potential Claim shall provide Developer's preliminary request for an adjustment to the Guaranteed Maximum Price and/or Contract Time, with a description of the grounds therefore.

25.4.1.2 Within thirty (30) days after serving the written Notice of Potential Claim, Developer shall provide a Claim including an itemized statement of the details and amounts of its Claim for any increase in the Guaranteed Maximum Price or Contract Time, as provided below, including a Time Impact Analysis and any and all other documentation substantiating Developer's claimed damages:

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

25.4.1.2.2 Citation to provisions in the Contract Documents, statute sections, and/or case law entitling Developer to an increase in the Guaranteed Maximum Price or Contract Time;

25.4.1.2.3 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;

25.4.1.2.4 The Time Impact Analysis of all time delays that shows actual time impact on the critical path; and

25.4.1.2.5 The line-item costs for labor, material, and/or equipment, if applicable, for all cost impacts priced like a change order according to Article 17 and must be updated monthly as to cost and entitlement if a continuing claim.

25.4.1.3 The Claim shall include the following certification by Developer:

25.4.1.3.1 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 Developer.

25.4.1.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of 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 including, without limitation, cumulative impacts. Any costs, expenses, damages, or time extensions not included are deemed waived.

25.4.2 Developer shall bear all costs incurred in the preparation and submission of a Claim.

25.4.3 Failure to timely submit a Claim and the requisite supporting documentation shall constitute a waiver of Developer's claim(s) against the District and Developer's Claim(s) for compensation or an extension of time shall be deemed waived, released, and discharged as to any entitlement for adjustment to Guaranteed Maximum Price and/or Contract Time.

25.5 Claim Resolution pursuant to Public Contract Code section 9204

Developer may request to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration. If Developer chooses to proceed, Developer shall comply with the following steps:

25.5.1 STEP 1:

25.5.1.1 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 forty-five (45) days, shall provide 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 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 Developer a written statement identifying the disputed portion and the undisputed portion.

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

25.5.1.2 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.

25.5.1.3 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.

25.5.2 STEP 2:

25.5.2.1 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 thirty (30) days for settlement of the dispute. Within ten (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 Developer a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

25.5.2.2 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, shall bear interest at seven percent (7%) per annum.

25.5.3 STEP 3:

25.5.3.1 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.

25.5.3.1.1 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.

25.5.3.2 Unless otherwise agreed to by the District and Developer 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.

25.5.4 STEP 4:

25.5.4.1 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.

25.6 Subcontractor Pass-Through Claims

25.6.1 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.

25.6.2 Within forty-five (45) days of receipt of this written request from a subcontractor, Developer shall notify the subcontractor in writing as to whether 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.

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

25.7 Government Code Claim Act Claim

25.7.1 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, 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 Developer's right to bring a civil action against the District.

25.7.2 Developer shall bear all costs incurred in the preparation, submission and administration of a Claim. Any claims presented in accordance with the Government Code must affirmatively indicate Developer's prior compliance with the claims procedure herein of the claims asserted.

25.7.3 For purposes of those provisions, the running of the time within which a claim pursuant to Public Contract Code section 20104.2 only must be presented to the District shall be tolled from the time the Developer submits its written claim until the time that the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

25.8 Claim Resolution pursuant to Public Contract Code section 20104 et seq.

25.8.1 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 Developer and District by those procedures set forth in Public Contract Code section 20104 et seq., to the extent applicable.

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

25.8.1.2 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 Developer.

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

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

25.8.1.3 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 Developer.

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

25.8.1.3.2 The District's written response to the claim, as further documented, shall be submitted to Developer within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by Developer to produce the additional information or requested documentation, whichever is greater.

25.8.1.4 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.

25.8.1.5 Following the meet and confer conference, if the claim or any portion of it remains in dispute, 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 Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

25.8.1.6 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.

25.8.1.7 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.

25.8.1.8 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.

25.8.2 Developer shall bind its Subcontractors to the provisions of this Article and will hold the District harmless against disputes by Subcontractors.

25.9 Claims Procedure Compliance

25.9.1 Failure to submit and administer claims as required in Article 25 shall waive Developer's right to claim on any specific issues not included in a timely submitted claim. Claim(s) not raised in a timely protest and timely claim submitted under this Article 25 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

25.9.2 District shall not be deemed to waive any provision under this Article 25, if at District's sole discretion, a claim is administered in a manner not in accord

with this Article 25. Waivers or modifications of this Article 25 may only be made by a signed change order approved as to form by legal counsel for both District and Developer; oral or implied modifications shall be ineffective.

25.10 Claim Resolution Non-Applicability

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

25.10.1.1 Personal injury, wrongful death or property damage claims.

25.10.1.2 Latent defect or breach of warranty or guarantee to repair.

25.10.1.3 Stop payment notices.

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

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

25.10.1.6 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.

25.11 Attorney's Fees

25.11.1 Should litigation be necessary to enforce any terms or provisions of this Contract, 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 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 or available online at

http://www.dir.ca.gov/. 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 no less than every thirty (30) days while Work is being performed and within thirty (30) days after the final day of Work performed on the Project 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 Developer and/or each Subcontractor in connection with the Work.

26.4.1.1 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 Developer and each Subcontractor for each week shall be provided on or before ten (10) days after the end of the Sunday to Saturday conventional week covered by the CPRs. District may not make any payment to Developer until:

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

26.4.1.1.2 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.

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

26.4.2.1 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.

26.4.2.2 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.

26.4.2.3 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.

26.4.3 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 mark ed 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.

26.4.4 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.

26.4.5 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.

26.4.6 [Reserved]

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 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 Skilled and Trained Workforce

26.7.1 Developer and its subcontractors at every tier hereby provide an enforceable commitment to comply with Public Contract Code section 2600 et seq., which requires use of a skilled and trained workforce to perform all work on the Contract or Project that falls within an apprenticeable occupation in the building and construction trades.

26.7.1.1 "Apprenticeable Occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief") had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

26.7.1.2 "Skilled and Trained Workforce" means a workforce that meets all of the following conditions:

26.7.1.2.1 All of the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief.

26.7.1.2.2 That either (A) the number of the skilled journeypersons employed to perform work on the Contract or Project by Developer or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, or (B) the hours of work performed by skilled journeypersons who have graduated from an approved apprenticeship program meet at least the percentages set forth in the following chart:

REQUIREMENT	EXCLUDED OCCUPATIONS
0%	Teamster
At least 30%	Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher
At least 60%	All remaining apprenticeable occupations

26.7.1.2.3 For an apprenticeable occupation in which no apprenticeship program has been approved by the Chief before January 1, 1995, up to one-half of the above graduation percentage requirements set forth in the above chart may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in the county in which the Project is located.

26.7.1.2.4 The contractor or subcontractor need not meet the apprenticeship graduation requirements if:

26.7.1.2.4.1 During a calendar month, Developer or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Contract or Project; or

26.7.1.2.4.2 The subcontractor was not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, and the subcontract does not exceed one-half of one percent (0.5%) of the price of the prime contract.

26.7.1.3 "Skilled Journeyperson" means a worker who either:

26.7.1.3.1 Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside of California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor; or

26.7.1.3.2 Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

26.7.2 Developer and its subcontractors will demonstrate its compliance with the Skilled and Trained Workforce requirements by either of the following:

26.7.2.1 Provide monthly reports to the District demonstrating that Developer and its subcontractors are complying with the requirements of Public Contract Code section 2600 et seq., which shall be a public

record under California Public Records Act, Government Code section 6250 et seq.; or

26.7.2.2 Provide evidence that Developer and its subcontractors have agreed to be bound by: (1) a project labor agreement entered into by the District that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce; (2) the extension or renewal of a project labor agreement entered into by the District prior to January 1, 2017; or (3) a project labor agreement that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce.

26.8 [Reserved]

26.9 Non-Discrimination

26.9.1 Developer herein agrees 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.

26.9.2 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.

26.10 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

Developer is responsible for any or all damage or loss to shipments until delivered and accepted on Site, 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]