Franklin-McKinley School District

PREPARING ALL CHILDREN AS GLOBAL LEARNERS

REQUEST FOR PROPOSALS
FOR LEASE OF REAL PROPERTY

Former Ramblewood Elementary School
8.86 acres of Real Property
1351 Lightland Road, San Jose, California 95121
Assessor's Parcel Number 494-64-045

February 27, 2026



NOTICE IS HEREBY GIVEN that the Franklin-McKinley School District ("District") is requesting qualified persons, firms, partnerships, corporations, associations, or professional organizations to lease all or a portion of the Ramblewood Elementary School site located at 1351 Lightland Road, San Jose, California (hereinafter referred to as the "Property"). (See **Exhibit A**, Site Location Map and **Exhibit A-1** the Assessor Parcel Map). The land is owned by the City of San Jose, and the school buildings are owned by the District subject to a land lease with the City. The lease does not include the adjacent public park.

Respondents to this Request For Proposal (RFP) should mail or deliver three (3) bound copies, one (1) unbound copy, and one (1) electronic submission in a PDF format, as further described herein, to:

Franklin-McKinley School District
c/o Terra Realty Advisors, Inc.
Attn: Scott Sheldon
450 Chadbourne Road, Fairfield, CA 94534
Ssheldon@tra-inc.net

ALL RESPONSES TO THIS RFP ARE DUE BY 1:00 P.M., ON April 3, 2026. Any Proposal received after that date and time will not be accepted and will be returned unopened. Each Proposal must conform and be responsive to the requirements set forth in this RFP.

The RFP is available via online at www.fmsd.org>Community>Business Opportunities>Bids.

The District reserves the right to waive any informalities or irregularities in received Proposals. Further, the District reserves the right to reject any and all Proposals and to negotiate lease terms with one or more Respondent firms for the entire Property or a portion of the Property. The District retains the sole discretion to determine issues of compliance and to determine whether a Respondent is responsive, responsible, and qualified. **RESPONDENT IS RESPONSIBLE FOR READING THIS RFP IN ITS ENTIRETY.**

If you have any questions regarding this RFP, please email Michelle Hightower at mhightower@tra-inc.net before 1:00 p.m. on 3/20/26. Answers will be posted on the District website by 5:00 p.m. on 3/27/26.

RFP RESPONSE SCHEDULE OVERVIEW

Date	**Event**
2/27/26	District Release RFP
3/13/26, 10:00 am – 12:00 pm	Site Inspection by Interested Parties
3/20/26, 1:00 PM	Deadline to Submit Written Questions on RFP
3/27/26, 5:00 PM	District to Post Responses to Written Questions on RFP
4/3/26, 1:00 PM	**Deadline to Submit Proposals**
Week of 4/6/26	If necessary, Conduct Interviews of Qualified/Short Listed Respondents
4/15/26	Notification to Selected Respondent(s)

I. BACKGROUND

The District is located in the County of Santa Clara, California and serves approximately 5,766 to 6,956 students throughout the City of San Jose. The District's mission is to ensure all 8th grade student graduates have the skills and knowledge to be ready for a college preparatory curriculum in high school. The intent is for all students to have access to programs that prepare them for university, careers, and lifelong learning.

Providing this level of quality education while experiencing an overall decline in student enrollment and reduced funding has been challenging for the District. As a result, the District is strategically reallocating resources which includes subleasing the former Ramblewood Elementary School. The campus closed in June 2025 and was deemed exempt surplus property based on the recommendation of the 7-11 Committee by the Board of Trustees October 2025. Leasing the campus allows the District to add key revenue for educational programs while retaining the Ground Lease with the City of San Jose for the school site in the event enrollment and funding increase in the future. The Ground Lease currently expires January 2044. A copy of the Ground Lease with the City of San Jose is attached as **Exhibit D**.

II. GENERAL INFORMATION

The District is seeking, by way of this RFP, Proposals from Respondents who are interested in entering into a lease for all or some portion of the Property. Therefore, while the District may prefer Proposals which include subleasing the entire Property, the District is willing to entertain Proposals for the subleasing of less than the entire Property.

Responses to this RFP must be submitted to the District, in accordance with the process set forth below, on or before 1:00p.m. (PST), on (the "Proposal Deadline"). The District is seeking a tenant preferably in educational services which may include children's or youth services, primary/elementary/secondary education, or public foundations. The site is available for profit or non-profit tenants.

The District will review all submitted proposals pursuant to the Proposal Process discussed below. If the District can reach an agreement with any of the Respondents, the specific terms and legal considerations of the lease agreement will be documented in a formal Third Party agreement to be entered into by the District and the successful Respondent.

III. THE PROPERTY

As noted above, the Property consists of approximately 8.86 acres of real property located at 1351 Lightland Road, San Jose, CA, of which approximately 4.08 acres includes the school site and related structures. The adjacent park is not a part of this RFP or future Lease Agreement. The site is situated within a single-family residential neighborhood, immediately west of Highway 101 near the Yerba Buena Road freeway exit.

The Property features an educational campus comprising a school building and outdoor areas. As previously stated, the adjacent public park is not included in the RFP. The school, built in 2006, was designed to serve up to 450 students from Kindergarten through Eighth grade.

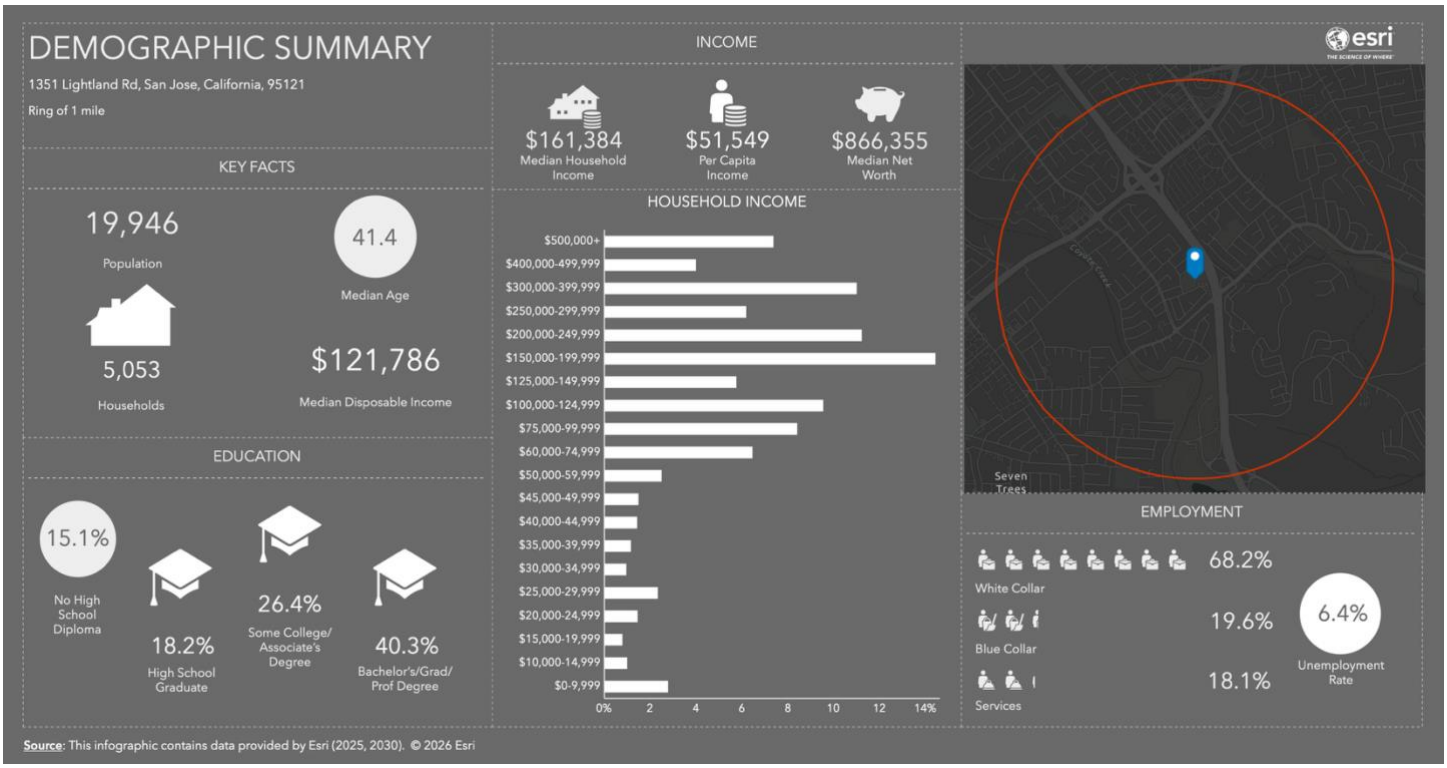
The site contains several buildings totaling approximately 37,950 square feet of gross building area. The school campus includes 17 classrooms, a library, administrative offices, a staff lunchroom, restrooms, and a cafeteria/multi-purpose room equipped with a

commercial kitchen. The buildings are fully fire-sprinklered and feature LED recessed lighting, interior stairwells, and an elevator. Construction consists of wood-frame structures with standing-seam metal roofs finished in light green. The buildings have been well maintained and are in overall good condition.

Additional site improvements include three steel-frame exterior shade canopies, three playground structures, and approximately 39,915 square feet of blacktop and play area. The Property also provides 49 on-site parking spaces. **Exhibit B** provides a Site Map for the entire campus,

Community Context

The City of San José has an estimated population of approximately 997,395 residents, with a median household income of $148,226. Within a one-mile radius of the Property, the population totals 19,946, and the median household income is $161,384. Additional demographic information for this one-mile radius is provided below.



IV. GENERAL QUALIFICATIONS

All Respondents seeking to enter into a lease agreement for the Property must provide the following basic information:

a. Name and contact information of person/private business firm.

b. An outline of the proposed use of the site and buildings.

c. The lease rate and space required, along with the proposed term and periodic increases in rent during the lease term.

d. A statement of financial qualifications that includes the following information:

i. Is the Respondent a subsidiary of, or affiliated with, any other corporation, corporations, partnerships or firms? If so, please specify. If the Respondent is a subsidiary, please indicate the extent to which the parent entity will guarantee performance by the subsidiary.

ii. A current Profit & Loss and Balance Sheet.

iii. Names and addresses of three financial references, including a primary bank letter stating the proposing entity has the financial resources to pay the proposed rent.

iv. Has the Respondent or its officers, principal members, shareholders or investors, or any of its parent, subsidiary or affiliated entities or other interested parties been adjudged bankrupt, either voluntary or involuntarily, within the past ten years? If so, explain.

v. Is there pending litigation against the Respondent entity or its officers, principal members, shareholders or investors, or any parent, subsidiary or affiliated entities or other interested parties other than minor personal injury suits involving claims under $250,000? If so, explain.

vi. Any other financial statements and/or other documents that would indicate acceptable financial standing and the ability of Respondent to fund the proposed acquisition of the Property.

Item(s) submitted should be sufficient to permit the District to determine the Respondent's financial capacity to fund the proposed acquisition of the District Property. The Respondent may wish to mark his/her financial statements, as "CONFIDENTIAL" or "PROPRIETARY." As such, it will be treated as confidential by the District to the extent permitted by law, as discussed below.

V. POTENTIAL LEASE TERMS

Respondents interested in leasing the District Property shall provide the following information, in addition to the General Qualification information discussed above and the Proposal Process discussed below.

The purpose of this RFP is to give Respondents the flexibility to submit proposals that will meet their specific needs. However, the following guidelines are provided to summarize the terms that the District would like to see within the final lease agreement with the selected Respondent. Respondents will be required to enter into a lease agreement drafted by the District which will include the terms discussed herein, as well as other mutually agreed on matters. The District may consider all Respondents submitted pursuant to this RFP and, at its sole discretion, may enter into direct negotiations with any Respondent during which the terms and conditions of the lease agreement may be negotiated to determine if the Parties can reach a mutually acceptable agreement. However, the following guidelines are provided to indicate the terms that the District is likely to accept and/or require.

- The District will give high priority to the Respondent offering the highest rent, both in terms of monthly rental payments as well as total payment over the term of the lease.

- Respondents must identify its planned development of the Property, if any. Regardless of the any future improvements considered, Respondents should discuss how the Property will be returned to the District at the end of the lease.

- Respondent must identify the total length of the lease term. The District is willing to consider any proposed term depending on the features of a particular proposal, up to the end of calendar year 2043. The District is also willing to consider optional extension periods whereby the Respondent agrees to lease the District Property for a certain initial term with the right (unilateral or mutual) to agree to one or more additional term(s) after the initial term expires.

- Respondent shall have a "Due Diligence Period" to take all actions Respondent deems necessary to ensure the Property can be used for the Respondent's intended use up to a maximum time of 45 days from the date a preliminary agreement is entered into, prior to full execution of a Lease Agreement. Respondent must describe the anticipated activities it will conduct on the Property to complete its inspection requirements and must confirm that it will return the Property to its original condition after its due diligence inspections. Respondents must acknowledge and consider that their access to the Property during the Due Diligence Period must be coordinated with the District, and Respondent must provide customary indemnification and insurance for such access and investigation. Respondents must also work with the City during the Due Diligence Period to obtain the necessary approvals for its planned reuse of the Property.

- Respondent should identify the potential governmental agency reviews and approvals necessary for its anticipated use of the Property, including rezoning, conditional use permits, and any anticipated environmental review document. Respondent may request the District's assistance in obtaining any necessary approvals during the Due Diligence Period; however, such assistance shall not be mandatory and shall be provided at no cost to the District, whatsoever. Respondent must confirm that it will be solely responsible for obtaining any necessary approval for the Respondent's intended use of the Property.

- Respondent must describe in detail the anticipated use of the Property. The District will accept any use that complies with local zoning and all applicable regulations, including any and all proposed zoning/entitlement modification(s) anticipated by Respondent, but will give special positive consideration to any use that aids the local economy or provides a benefit to local community.

- Respondent must address how its intended use of the Property will impact the surrounding area and how such impacts will be mitigated by Respondent. Such considerations shall include all traffic and access issues related to the intended use, and how such proposed traffic and access will be accomplished.

VI. PROPOSAL PROCESS

a. The District will accept Proposals as of the deadline as set forth above.

b. Proposals shall mailed or delivered as follows: Three (3) bound copies and one (1) electronic submission in a PDF format to Franklin-McKinley School District, c/o Terra Realty Advisors, Inc., Attn: Scott Sheldon, 450 Chadbourne Road, Fairfield, CA 94534; ssheldon@tra-inc.net.

c. Costs incurred by the Respondent in preparation of the response to the RFP are the sole responsibility of the Respondent.

d. The District may choose to interview one or more of the Respondents at the District's sole discretion. The District may also select solely on the basis of the written Proposal.

e. All Proposals should be verified before submission. Adjustments may not be permitted after submission to the District. The District will not be held responsible for any errors or omissions on the part of the Respondent in the preparation of their Proposal.

f. The District reserves the right to reject any and/or all Proposals, or to refuse to negotiate or withhold the award of any contract, for any reason. The District may also waive or decline to waive irregularities in any Proposal.

g. The District may begin negotiations with selected Respondents at the District's discretion. If negotiations are successful, the District's Governing Board may invite one or more Respondents to present its/their Proposal(s) to the Governing Board.

h. Upon selection of a Respondent, the District shall provide an option agreement and ground lease for negotiation by the Parties which will set forth the terms of the transaction. The District reserves the right to terminate this process at any point prior to the selection of the successful Respondent and solicitation of Proposals in no way obliges the District to proceed with any particular transaction.

i. If Respondent is represented by a Broker, Respondent will be responsible for the payment of its own Brokers commission.

VII. ADDITIONAL INFORMATION

Respondents are not to contact District officials including, but not limited to, Governing Board Members, the Superintendent, or any other management employee or representative of the District, other than the District Contact (or representatives expressly approved by the District Contact) regarding this RFP, the District Property, or the District's planned lease of the Property.

Contacting District Governing Board Members, officials, employees and/or representatives, other than the District Contact (or representatives expressly approved by the District Contact), MAY RESULT IN THE DISQUALIFICATION OF YOUR PROPOSAL.

Furthermore, all Respondents must disclose if any member, principal, or manager of Respondent has any known family member relationship(s) with any District officials including, but not limited to, Governing Board Members, the Superintendent, or any other management employee or representative of the District. **Failure to disclose of any such known family member relationship(s) MAY RESULT IN THE DISQUALIFICATION OF YOUR PROPOSAL.**

The District will allow for site visits of the Property to interested parties upon appointment only. Anyone interested in reviewing the Property may contact the District Contacts to schedule an appointment. Under no circumstances shall any interested party conduct any structural inspection or testing on the District Property or take any action that will disturb the physical state of the Property during such site visits. Nothing in the RFP shall be construed as guaranteeing any party the right to site visit or requiring the Property to provide site visits to any party, and any party who is unable to participate in a site visit for any reason shall

not be granted any special consideration.

VIII. RECEIPT OF PROPOSALS; DISTRICT CONTACTS INFORMATION

All RFP responses must also be addressed and delivered to the District by the Proposal Deadline at the address above, through hand delivery or mail and via email. The District is not responsible for any problems or issues with the mail delivery system and therefore, Respondents must take all actions necessary to ensure the timely delivery of their Proposals.

All correspondence with the District Contact should be done in writing. Any oral statement made to or by the District Contact shall not be considered part of the RFP and shall in no event bind the District.

IX. QUESTIONS

Any questions regarding the Property or the RFP process must be in writing and emailed to Michelle Hightower at Terra Realty Advisors, Inc.; mhightower@tra-inc.net; **on or before 1:00 p.m. (PST), on March 20, 2026.** The District will post responses to all questions received on the District website at: www.fmsd.org/community/business-opportunities/bids on or about **5:00 pm (PST), on March 27, 2026**. Respondents must incorporate the information provided by the District in response to the questions into their Proposals. The District shall not provide responses to any oral questions and any oral statement made by any person shall not be construed as part of the District's RFP package.

X. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the District. All Proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the possible exception of those elements in each Proposal as follows: Respondents may mark portions of their response which are defined by the Respondent as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary"; however, the District does not guarantee that any information so marked will be protected from public disclosure. Respondents recognize that the District, as a public agency, is subject to disclosure requirements with the exception of where disclosure is not required under the California Public Records Act. Any Proposal which contains language purporting to render all or significant portions of the Proposal "Confidential," "Trade Secret," or "Proprietary" may be rejected or regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Franklin McKinley School District shall not be in a position to establish that the information contained in any Proposal is a trade secret. If a Public Records Act request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the District will provide the entity making the Proposal in question with reasonable notice before releasing the information. However, the District will comply with its Public Records Act requirements unless the entity making the Proposal seeks and obtains protection from disclosure by a court of competent jurisdiction.

XI. CONDITIONS AND LIMITATIONS

This RFP does not represent an offer or commitment by Franklin-McKinley School District to enter into an agreement with a Respondent or to pay any costs incurred in the preparation of a response to this request. The Proposal and any information made a part of the Proposal will not be returned to Respondent.

Respondent may request that the District provide certain representations and warranties regarding the District's ownership of the District Property, including warranty that the District holds title in and to the District Property without competing claims to possession. However, Respondent must take sole responsibility for conducting all the inspections necessary to determine that the District Property is suitable for the Respondent's intended purpose.

The Respondent shall not collude in any manner or engage in any practices with any other Respondents that may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause the Respondent's Proposal to be rejected by the District.

The District has sole discretion and reserves the right to reject any and all Proposals received with respect to this RFP and to cancel the RFP at any time prior to entering into an agreement for the District Property. It should be noted explicitly that there is no "bidding" process intended with this submission review process, and this invitation is not an offer by the District to enter into an agreement to negotiate or any other agreement, nor is a response by an interested party to be considered as an offer that may be accepted by the District. Neither the District nor any Respondent will be bound to any agreement unless that agreement is in writing, approved by the District's Governing Board, and executed by both the interested party and an official authorized by District.

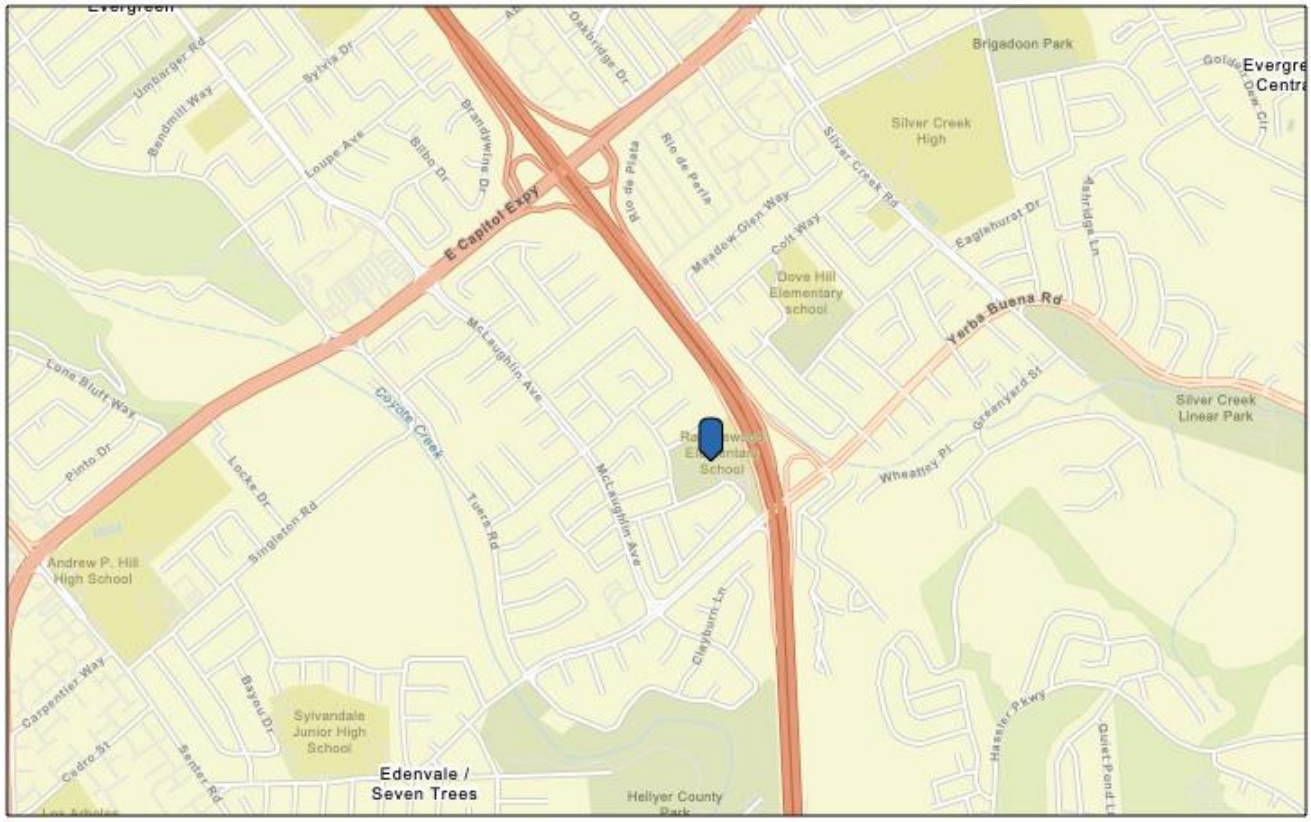
The District reserves the right to issue clarification of the RFP or additional data without changing the terms of the RFP. The District reserves the right to reject any response or all responses, to terminate discussions and to select any party with whom to deal, whether or not that party has responded to this RFP. The District may entertain or make a Proposal that may not conform to this RFP and may adopt terms that may have been proposed by a party not selected.

The District sincerely thanks you for your interest and looks forward to receiving Proposals for the Property.

XII. LIST OF EXHIBITS IN THE RFP

A. Location Map & Assessor Parcel Number Map
B. Site Map
C. Property Photos
D. Ground Lease Agreement

EXHIBIT A
Location Map
Former Ramblewood Elementary School



2/13/2026

1:17,842
0 0.1 0.2 0.4 mi
0 0.17 0.35 0.7 km

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community

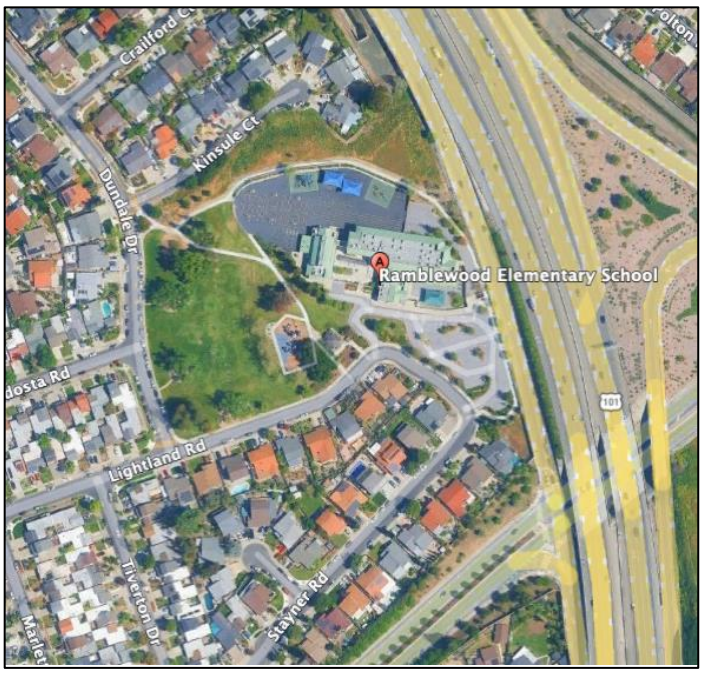


EXHIBIT A1
Assessor Parcel Number Map

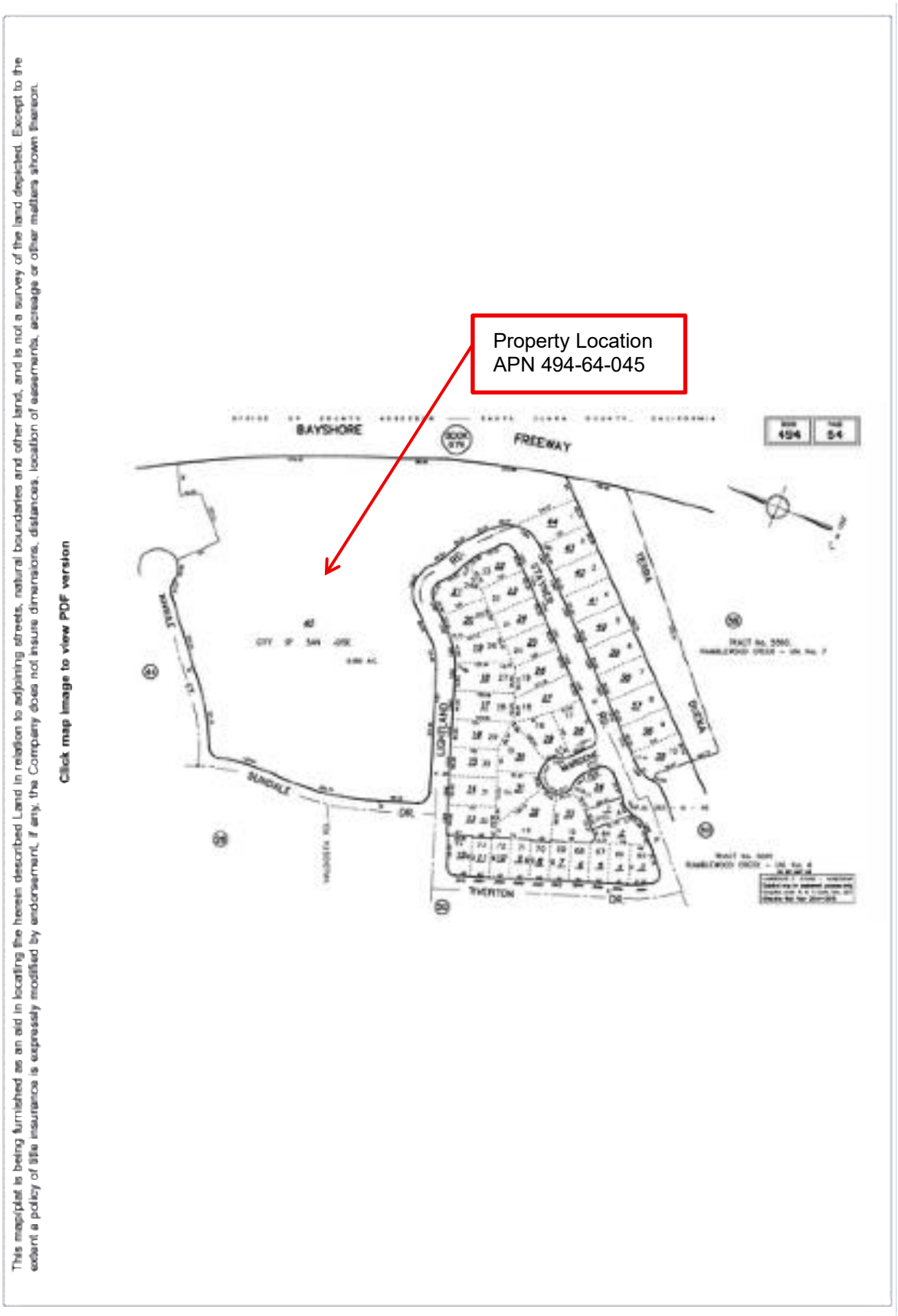


EXHIBIT B

Site Map

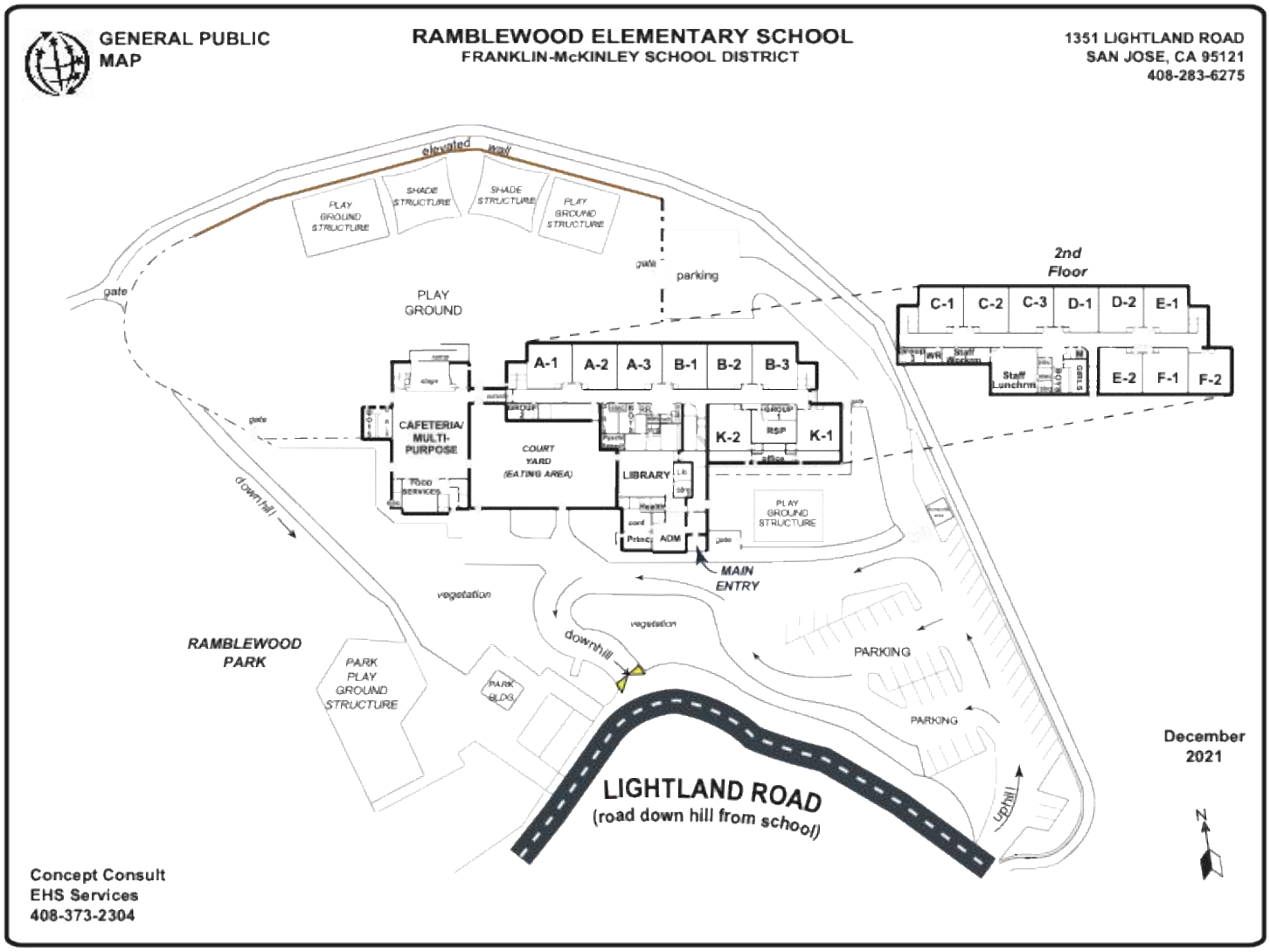


EXHIBIT C
Property Photos










WGS84
±11ft
37.29613, -121.81132
°T
±10
SW247
NO PARKING
12/11/25


WGS84
±9ft
37.29612, -121.81126
°T
±12
S165
12/11/25

EXHIBIT D
Ground Lease Agreement

L 12-23-03
S 12-23-03
C 12-23-03

LEASE
BETWEEN
CITY OF SAN JOSE
AND
FRANKLIN- MCKINLEY SCHOOL DISTRICT

THIS LEASE is made and entered into on this 23rd day of January, 2004 by and between the **CITY OF SAN JOSE**, a Municipal Corporation of the State of California ("City"), and **FRANKLIN-MCKINLEY SCHOOL DISTRICT**, a California public school district ("District").

RECITALS

A. City is the owner of that property known as Ramblewood Park, located at Kinsule Court at Dundale Road in the City of San Jose, State of California (the "Property");

B. In November 2002, the citizens of San Jose authorized the City to lease a portion of the Property to the District for a term of not less than forty (40) years, to allow construction of a new school on 0.56 acres of the Property, and to allow the District to use the Property for school-related recreational uses;

C. The area of the Property subject to this lease consists of 4.08 acres, comprised of 0.56 acres designated as the "Building Area" and 3.52 acres designated as "Surrounding Improvements" (as further described below) on the site map attached hereto as **Exhibit A** (collectively referred to as the "Premises");

D. District desires to design and construct a new school ("School") on .56 acres of the Premises;

E. The District anticipates that the School will consist of approximately 38,600 square feet of space, and will serve approximately 450 students from Kindergarten through Grade 6;

F. The School will be a two story structure which is anticipated to contain the following facilities:

- 2 Kindergarten classrooms
- 15 classrooms
- 1 bonus room
- administrative offices
- staff facilities
- 1 library/media center
- 2 sets of student restrooms
- 1 multi-purpose room
- interior hallways
- one elevator;

G. The District also intends to install a paved play area, playground, pathways, landscaping and a parking lot for approximately 56 spaces as further depicted on Exhibit A (collectively, the "Surrounding Improvements") on the Premises;

H. The School and the Surrounding Improvements are subject to the Civic Center Act, Education Code sections 38130-38139, which declares that there is a civic center at every public school facility and grounds within the state and provides for community use of school facilities and grounds for recreational and other purposes;

I. City use of the Premises is subject to Education Code section 17527, et seq.

J. The Surrounding Improvements will be used for school-related recreational uses and, pursuant to the terms of this Lease, may be used for other recreational use, including but not limited to physical education by students, other student recreation, community recreation under

the Civic Center Act, City recreation pursuant to this Agreement, public parking available to serve Park users and other members of the public, including without limitation, staff, parents and visitors;

K. The District, pursuant to section 17529 of the Education Code, has determined that entering into a joint use arrangement with the City (1) will not interfere with the educational programs or activities of any school or class conducted on the Premises, (2) will not unduly disrupt the residents in the surrounding neighborhood, and (3) will not jeopardize the safety of the children at the Premises;

L. City's Director of Parks, Recreation and Neighborhood Services ("Director") is responsible for overseeing the City's parks, and the City's Director of Public Works ("DPW Director") is responsible for overseeing the plan review and construction of public improvements on City property; and,

M. The purpose of this Lease is to set forth City's and District's responsibilities with respect to the construction and operation of the School and the Surrounding Improvements on the Premises.

In view of the above, the parties agree as follows:

SECTION 1. PURPOSE OF LEASE.

A. District desires to design, construct and operate the School and Surrounding Improvements on the Premises. The School shall occupy no more than 0.56 acres of the Premises. District agrees to pay for all costs associated with the design, construction, maintenance and operation of the School and Surrounding Improvements, including City's costs in design and construction review, and other reasonable costs incurred by City in assisting District in completing the construction of the School and Surrounding Improvements, as provided in Section 4 below. City shall have no responsibility for any cost for construction, maintenance or operation of the School or the Surrounding Improvements. City shall remain responsible for the maintenance and operation of all portions of the Property

which are not leased to the District. City makes no assurances regarding the level of maintenance to be provided on the remaining portion of the Property.

SECTION 2. TERM OF LEASE; RENEWAL.

The term of this Lease shall commence upon full execution by both parties and shall expire forty (40) years after the date of full execution of this Lease, unless sooner terminated pursuant to provisions contained in this Lease. The City and District may mutually decide to enter into written extensions or renewals of this Lease.

SECTION 3. USE OF FACILITIES BY CITY.

As consideration for the City's agreement to lease the Premises to the District, the District agrees to allow the City priority use of the following School facilities at no cost during the times set forth below ("City Use Period"), pursuant to the terms and conditions of the joint use provisions set forth in Section 21 of this Agreement:

- library/media center after 4 p.m. on weekdays; provided that City's access to and use of computers and other multi-media equipment located in the library/media center shall be limited to those computers and other items of equipment which are intended for educational or other use by students and others, and City shall not be entitled to access to or use of computers that are designated for the exclusive use of District personnel. City shall staff the library during periods of use by City .
- multi-purpose room (including stage, kitchen and attached restrooms) starting one-half hour after school dismissal on weekdays, after 8 a.m. on weekends, and during summer and inter-session breaks
- restrooms concurrent with any scheduled City use including weekday after-school programs and for weekend youth sport leagues and summer day camps
- exterior courtyard for special events after school hours, on weekends, and during summer and inter-session breaks
- playground & blacktop after school hours, on weekends, and during summer and inter-session breaks
- room designated "flexible space/classroom" – starting one-half hour after school dismissal on weekdays, after 8 a.m. on weekends, and during summer and inter-session breaks

- dedicated classroom space by special arrangement (not to exceed three hours per day after school on weekdays, and on weekends as mutually agreed to in writing by District and City). Notwithstanding anything to the contrary in this Agreement, the District maintains primacy of use of dedicated classroom space at all times.

District and City shall meet once before the start of each school year and once approximately halfway through each school year ("Use Coordination Meetings") in order to determine the dates on which portions of the School or Surrounding Facilities will be made available for District use during City Use Periods. The District shall have the opportunity to schedule up to twenty (20) activities during City Use Periods per school year. The City shall make reasonable efforts to accommodate the District's requests for scheduling of District activities during City Use Periods, provided that the District requests such use dates at least six (6) months in advance at a Use Coordination Meeting. City shall be under no obligation to make space available to the District during City Use Periods if the City is not notified of the use request at least six months in advance at a Use Coordination Meeting. City shall not unreasonably withhold its permission for the District to use the School or Surrounding Facilities during City Use Periods. The term "City Use Period" is merely intended to designate the times, days and facilities when City has the right to reserve the Premises or the specified portion thereof, for City use. Nothing in this Agreement shall be deemed to imply that the City has leased or is otherwise in control of any portion of the Premises for the entire "City Use Period". Furthermore, unless such damage was caused by City or City's employees, contractors, agents, representatives, or invitees, nothing herein would require City to repair damage caused to a portion of the Premises when not in use by City, nor to protect, maintain or provide security of the Premises during the periods when the City is **not** using such portion of the Premises, regardless of whether that period falls within the "City Use Period." Notwithstanding any other provision of this Agreement, City shall be responsible for damage caused by or attributable to the negligence of City or City's employees, contractors, agents, representatives, or invitees, regardless of when such damage occurs.

District also agrees as consideration for City's agreement to lease the Premises to the District, to construct and maintain the parking lot, which shall be open to the public and shall be for the primary purpose of serving Park and recreational users and other

members of the public. Use of the parking lot by District staff, parents and visitors shall be on an as-available basis, and no portion of the parking lot is reserved or set aside for District use.

SECTION 4. PAYMENTS.

Within 30 days of invoice from City, District shall pay to City, City's reasonable review fees and other costs incurred by City, which are estimated not to exceed 3 percent of total construction costs for the School, the Surrounding Improvements, and any other required improvements such as traffic lights or sidewalks which must be inspected by City (collectively, the "Total Construction Costs"), but which in no event shall exceed 5 percent of Total Construction Costs. City's costs are for City's involvement in the preparation and negotiation of this Lease, including without limitation, design and construction reviews, inspections and other reasonable costs incurred by City.

SECTION 5. RIGHT-OF-ENTRY.

Subject to any required permits, environmental review and similar laws, rules or regulations that District must comply with before construction of the School, permission is hereby granted to District, its officers, members, agents, contractors, volunteers, and subcontractors, to enter upon the Premises and the Property for the purpose of constructing the School. The right of entry is limited to the area around the Premises which is reasonably necessary for construction of the School and for ingress and egress thereto, and as approved by the Director. The Director may modify or terminate District's right of entry in the event that District's activities unreasonably interfere with the use of the remainder of the Park or cause a public health or safety risk.

SECTION 6. CONSTRUCTION REQUIREMENTS.

A. For the purpose of this Lease, the term "Work" shall mean the work required to construct the improvements described herein on the Premises.

B. District is solely responsible for all costs incurred for planning, design, construction, project management, administration and supervision of construction of the School and the Work and for operation and maintenance of the School and Surrounding Improvements.

C. District shall be responsible for the development of plans and specifications for the Work and the construction of the School and Surrounding Improvements as specified in this Lease. District shall develop the plans and specifications for the Work ("Project Specifications") for review and approval by City's DPW Director, which approval shall not be unreasonably withheld, at both the 80% design development stage and the 100% design development stage. District shall provide the City with six sets of the Project Specifications for review by the DPW Director. DPW Director's review shall be limited to the plan review and inspections provided herein, and shall not involve engineering services nor any other services, unless DPW Director agrees in writing to provide such services and for the District to pay costs to DPW for performing such services. City understands and agrees that the design of the School must receive the approval of the Division of the State Architect.

D. District shall cause all labor and materials incorporated in the Work to be furnished in accordance with the requirements and specifications set forth in the Plans, and in accordance with all applicable laws, rules and regulations and with all City policies, if applicable.

E. City's review or approval of the Project Specifications is not a release of District's responsibility for the correction of mistakes, errors or omissions contained in the Project Specifications, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

F. Before commencing construction of the Work, District shall submit a schedule of construction for approval of the Director. District may not begin construction unless and until the DPW Director has delivered to District a written notice to proceed ("Notice to Proceed"). The Notice to Proceed will not be issued before the insurance requirements set forth on **Exhibit B**, entitled "Insurance Requirements," have been met. Once such insurance requirements have been met and provided District is otherwise in compliance with the terms of this Lease, the DPW Director shall not unreasonably delay issuance of the Notice to Proceed.

G. District shall coordinate construction activities in advance with City making all reasonable efforts to avoid adverse impact to the public's ability to use Ramblewood Park (area outside of construction site). District shall promptly, and at its sole cost and expense repair or

replace any portions of Ramblewood Park or other City property damaged during construction of the School and Surrounding Improvements.

H. Pursuant to Education Code Section 17280 and California Code of Regulations, Title 24, section 4.315, the State Architect and State Fire Marshall are required to inspect and approve all Plans and Specifications for the School. District is solely responsible for obtaining these approvals.

I. At all times during the term of this Agreement, District shall be responsible for the maintenance of the Premises. Additionally, District shall be responsible for keeping the area around the School in a neat and clean condition and shall not impede any regular activities from occurring on Ramblewood Park. District shall insure that its activities on the Premises or at Ramblewood Park do not cause harm to the park and do not generate an additional need for maintenance or repair of the Park.

J. District and City shall meet on a periodic agreed upon basis, but not less often than once every three years, to review the District's compliance with the terms of this Agreement, including without limitation, District's maintenance of the Premises and whether the City has been given the opportunity to use the use the Premises in compliance with Section 3.

K. District shall relocate and install 4 existing picnic tables in the adjacent Park at the direction of the City of San Jose. District's obligation under this paragraph shall be limited to relocation of existing tables currently located within the Premises. District shall have no obligation to purchase or install new picnic tables.

SECTION 7. COMPLIANCE WITH LAW AND PLANS.

A. District shall, at its sole cost and expense, obtain all governmental reviews and approvals, licenses and permits which are, or may be, required and necessary to construct and complete the Work in accordance with the provisions of this Lease, including, but not limited to, all plans and specifications, approvals, site development reviews, development permits and environmental review. District shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, such governmental approvals, licenses, and permits as well as with applicable laws and regulations.

B. If District for any reason fails to comply with any of City's applicable requirements, including compliance with the Plans, or any other legal requirement concerning District's construction of the Work, then City has the right to require District to alter, repair, remove or replace any improvements or perform any other action to bring Work into compliance with such requirements to the satisfaction of City's DPW Director for City requirements or the applicable oversight agency for other requirements, and at no cost to City.

SECTION 8. OWNERSHIP AND USE OF PREMISES.

Title to the School and Surrounding Improvements shall automatically vest in District, provided that District shall surrender all right, title and interest in the Premises upon expiration or early termination of this Lease, as further described in the Surrender provisions set forth below.

SECTION 9. GENERAL RESPONSIBILITIES OF DISTRICT.

District shall cite the cooperative efforts of City at the opening of the School and on mutually agreed upon signage on the School. District shall make arrangements for the installation of separate meters for utilities so that the utilities for the Premises shall be billed to and paid for by the District.

District agrees maintain the School and Surrounding Premises at all times in safe and good condition. If at any time the City reasonably believes that District has failed to properly maintain or repair the School or Surrounding Premises in any material way, City may deliver notice of default to District. District's failure to cure such defect pursuant to Section 15 shall be grounds for termination of this Lease.

SECTION 10. RELATIONSHIP OF THE PARTIES.

The parties hereto mutually agree that District and District employees, agents, volunteers and independent contractors hired to perform District covenants made hereunder are neither agents nor employees of the City, and that District and District employees shall not be entitled to any salary, fringe benefits, pension, worker's compensation, sick leave, insurance, or any other benefit or right connected with employment by the City, or any compensation other than as prescribed herein. District hereby expressly waives any claim it may have to any such rights.

SECTION 11. NONDISCRIMINATION.

District shall not discriminate against any employee or applicant for employment or user of the Premises, on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, nor shall District in the performance of service under the provisions of this Lease, discriminate against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.

SECTION 12. INDEMNIFICATION.

A. In lieu of and notwithstanding the pro rata risk allocation which might be imposed between the Parties pursuant to Government Code section 895.6, or any other statute, regulation or rule that may affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party will not be shared pro rata but instead the District and City agree to the following:

(1) Claims Arising From Sole Acts or Omissions of District.

The District agrees to defend and indemnify the City, its agents, officers and employees (hereinafter collectively referred to as "City") from any claim, action or proceeding against City, arising solely out of the acts or omissions of the District in the performance of this Agreement and for any claim, action or proceeding relating to the City's authority to lease the Premises to District's hereunder. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation does not relieve the District of any obligation imposed by this Agreement. City must notify District promptly of any claim, action or proceeding and cooperate fully in its defense.

(2) Claims Arising from the Sole Acts or Omissions of City.

City agrees to defend and indemnify the District, its agents, officer and employees (hereinafter collectively referred to as "District") from any claim, action or proceeding against District, arising solely out of the acts or omissions of the City in the performance of this Agreement, including City's use of the Premises. At its sole discretion, District may participate at its own expense in the defense of any claim, action or proceeding, but such participation does not relieve the City of any obligation imposed by this Agreement. District must notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

(3) Claims Arising From Concurrent Acts or Omissions.

District agrees to defend itself and the City agrees to defend itself, from any claim, action or proceeding arising out of the concurrent action or omissions of District and City. In such cases, District and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in paragraph 12(A)(5) below.

(4) Joint Defense

Notwithstanding paragraph 12(A)(3) above, in a case where District and City agree in writing to a joint defense, District and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of City and District. Joint defense counsel must be selected by mutual agreement of the District and City. District and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided below. District and City further agree that neither party may bind the other to a settlement agreement without the written consent of both District and City.

(5) Reimbursement and/or Reallocation

Where a trial verdict or neutral third party in an arbitration award allocates or determines the comparative fault of the parties, District and City may seek reimbursement and/or

reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

SECTION 13. INSURANCE REQUIREMENTS.

A. District and City, each at its sole cost and expense, shall procure and maintain the insurance requirements set forth in the attached **Exhibit B** or cause these requirements to be met.

SECTION 14. ASSIGNMENT.

This Lease is not assignable by District. Any attempt by District to assign any rights, duties or obligations arising under the provisions of this Lease shall be void and of no effect. Further, any assignment or attempt at assignment by District shall constitute a material breach of this Lease, for which this Lease will be automatically terminated without notice.

This Lease is not assignable by City without District's prior written consent, which consent shall not be unreasonably withheld.

SECTION 15. DEFAULT AND TERMINATION.

A. In the event that District fails to perform any material term, covenant or condition of this Lease including, but not limited to, failure to complete the School in a timely manner, District shall be in default if District fails to cure any such breach within thirty (30) days of written notice being sent by City specifying the breach and requesting that it be cured, or, if the breach cannot be cured within thirty (30) days, if District fails to provide City a plan within thirty (30) days of written notice evidencing how it will commence to cure such breach, diligently pursue such cure, and complete the cure within a reasonable time.

B. In the event that City fails to perform any material term, covenant or condition of this Lease, City shall be in default if City fails to cure such breach within thirty (30) days of written notice being sent by District specifying the breach and requesting that it be cured, or, if the breach cannot be cured within thirty (30) days, if City fails to provide District a plan within thirty (30) days of written notice evidencing how it will commence to cure such breach, diligently pursue such cure, and complete the cure within a reasonable time.

C. In the event of default by a party to this Lease, the other party may, at its election, terminate this Lease or keep this Lease in effect and enforce, by an action at law or in equity, all of its rights and remedies under the Lease.

SECTION 16. SURRENDER OF PROPERTY.

A. On the last day of the term of this Lease or any renewal term thereof, District shall, at City's sole option, either surrender to City the Premises in good order, condition and repair (except for reasonable wear and tear) and free and clear of all liens and encumbrances (other than those, if any, permitted hereby or otherwise created or consented to by City), or demolish and remove the improvements on the Premises. If demolished, District shall at City's option, restore the Premises to the condition existing prior to this Agreement.

B. If upon the date of expiration or termination of this Lease, City has not delivered written notice to District of its desire to allow some or all of the improvements to remain, or to be demolished, District may deliver written notice to City, requesting such decision within 30 days of delivery of notice. If City fails to respond within 30 days, City will be deemed to have requested the improvements to be delivered to the City and remain on the Premises.

C. If City permits some or all of the improvements to remain on the Premises after termination or expiration of this Lease, District shall execute, acknowledge and deliver to City such instruments of further assurance as in the opinion of City are necessary or desirable to confirm or perfect District's right, title and interest in and to the improvements.

SECTION 17. BINDING ON SUCCESSORS.

Subject to the provisions of Section 14, this Lease shall be binding on and shall inure to the benefit of the transferees, successors, assigns of the parties hereto.

SECTION 18. NOTICES AND REPRESENTATIVES.

All notices required or permitted to be given under this Lease shall be in writing and personally delivered, delivered by overnight delivery service, or sent by U. S. mail, postage prepaid, addressed as set forth below. Either party may change its address by sending written notice to

the other pursuant to the provisions of this Section. Notices personally delivered are effective upon receipt. Notices sent by overnight delivery service are effective one day following the date sent. Notices sent by U.S. mail are effective three days following the date sent.

CITY: Director of Parks, Recreation and Neighborhood Services
City of San Jose
4 North Second Street, Suite 600
San Jose, California 95113-1305

District: Franklin McKinley School District
645 Wool Creek Drive
San Jose, California 95112
Attn: Assistant Superintendent, Business Services

SECTION 19. ENVIRONMENTAL CONDITIONS.

A. The District, at District's sole cost and expense, shall be responsible for the remediation of any Hazardous Materials condition existing in, on, or under the Premises. The District's obligations extend to the remediation that a governmental authority with jurisdiction could legally require. District shall be responsible for its own inspection of the Premises and shall make such environmental investigation of the condition of the Premises, as necessary to ascertain the condition of the Premises. The term "Hazardous Materials" is defined in the attached **Exhibit C**.

B. The City and District agree that neither of them will cause or permit any Hazardous Materials to be placed upon the Premises, except as permitted by law. Each of the parties hereto shall indemnify and hold the other party harmless from any loss, claim, or expense occurring in violation of this Section 19.

C. City warrants that to the best of its knowledge the Premises does not contain any Hazardous Material, defect, or any other condition that is incompatible with use of the Premises for a school site (with the exception of naturally-occurring asbestos which will be remediated by the District prior to commencement of construction of the School).

SECTION 20. DAMAGE OR DESTRUCTION

A. In the event that the School is damaged or destroyed by fire or other casualty, District may, at its sole option, elect to repair the damage to the School, or to terminate this Agreement.

B. If District elects to repair the School, it shall diligently pursue repair of the School and shall repair the School to such reasonable standards as determined by District and shall also repair or replace the Surrounding Improvements, if they are also damaged.

C. District shall place fences, enclosures or other structures as City and District mutually agree are reasonable to prevent people from accessing the School until the repair to the building or demolition is completed.

D. District shall notify City of its election to repair or terminate this Agreement within 30 days of City's request for notification of District's election hereunder. If District elects to terminate this Agreement, District shall demolish the School and/or Surrounding Improvements and remove any rubble or debris from the Premises, if requested by City, within ninety (90) days of District's delivery of notice of termination of this Agreement. If City does not request District to remove the rubble or debris or the Surrounding Improvements, District shall vacate the Premises no later than one hundred eighty (180) days after delivery of District's notice of termination. Upon such termination and vacation or demolition, as appropriate, City and District shall have no further obligations under this Agreement and District may retain any additional insurance proceeds it receives.

SECTION 21. JOINT USE PROVISIONS.

A. General Priority of Use. Throughout the term of this Agreement, District programs, including educational, athletic and recreational programs, shall take precedence and priority over City's right to use the Premises, except during City's Use Period.

B. City Use of Premises. City shall be entitled to priority use of the Premises during City's Use Period in accordance with the provisions of Section 3 above. At the discretion of the District and with reasonable prior notice to City, City may be responsible for opening and closing the facilities referred to in Section 3 above during periods of City use. District shall provide the City with keys to those areas of the Premises designated for regular use by City.

C. City Programs. City shall be responsible for the arrangement and funding of the social, educational, leisure, and recreation programs and services provided by or through City at the Premises. City shall pay for all supplies, materials and specialized equipment used in the provision of programs at the Premises, except as provided in Section 3 above. City shall be entitled to charge and collect fees for any activity or program organized by the City and conducted at the Premises, in such amounts as will enable the City to recover its program costs.

D. Verification of Qualifications. City shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with the City's use of the Premises. City shall be exclusively responsible for supervision of all persons conducting or participating in programs or activities during City's use of the Premises.

E. Fingerprinting and Criminal Background Investigations. City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 10911.5. City's responsibility shall extend to all recreation program staff who have direct contract with minors, regardless of whether such individuals are paid or unpaid, and/or acting as independent contractors of the City. Verification of compliance with this section shall be provided in writing to the District prior to each covered individual's commencement of employment with City.

F. Damage to Premises. City shall be solely responsible for all damages to the Premises and/or any furniture, equipment, supplies or other personal property within the Premises attributable to City's use thereof, whether such damages are caused by the employees, agents, officers, contractors, program participants or invitees of City.

G. Clean-Up. City shall clean up and return any spaces used by the City to their pre-use condition, but shall not be responsible for other normal wear and tear or custodial services.

H. District Rules and Regulations. City shall ensure that all rules and regulations of the District's Governing Board and all federal, state, and local laws, ordinances and regulations, are strictly observed during all periods of City's use of the Premises.

I. Prohibited Activities. Use of tobacco products, intoxicants or narcotics is prohibited in or about the Premises, nor shall obscene language, quarreling, fighting, or gambling be permitted.

J. Closure of Premises. The parties recognize that the Premises or portions thereof may need to be closed from time to time in the interest of public safety or for repairs and maintenance. District shall give notice to City as far in advance as possible in the event any portions of the Premises are to be closed. City shall immediately notify District of any conditions necessitating a closure of the Premises or any portion thereof. The District shall use its best efforts to coordinate the closing of the Premises with the City's schedule of use.

SECTION 22. MISCELLANEOUS PROVISIONS.

A. Captions of sections are for convenience only and shall not be considered in resolving any questions of interpretation or construction.

B. Time is and shall be of the essence of this Lease and of each term or provision of this Lease.

C. All exhibits referred to in this Lease are incorporated by reference.

D. The waiver by any party to this Lease of a breach of any provision of this Lease shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Lease.

E. District represents and warrants that it is fully authorized to enter into this Lease and its signatory to this Lease is authorized by District's Board to execute this Lease on its behalf.

F. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between District and City. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way.

G. If a court of competent jurisdiction finds or rules that any provision of this Lease is void or unenforceable, the remaining provisions of this Lease, as the case may be, shall remain in

effect. This Lease shall be construed as if such invalid or unenforceable provision had not been contained in this Lease; providing that construction of the Lease without the invalid or unenforceable provision does not deprive the parties of the benefit of their bargain.

WITNESS THE EXECUTION HEREOF the day and year set forth below.

"CITY"

APPROVED AS TO FORM:

BARBARA K. JORDAN
Senior Deputy City Attorney

CITY OF SAN JOSE, a Municipal corporation

By: _____
Name: PETER JENSEN
Title: ASSISTANT TO THE CITY MANAGER
Date: 12-23-03

"District"

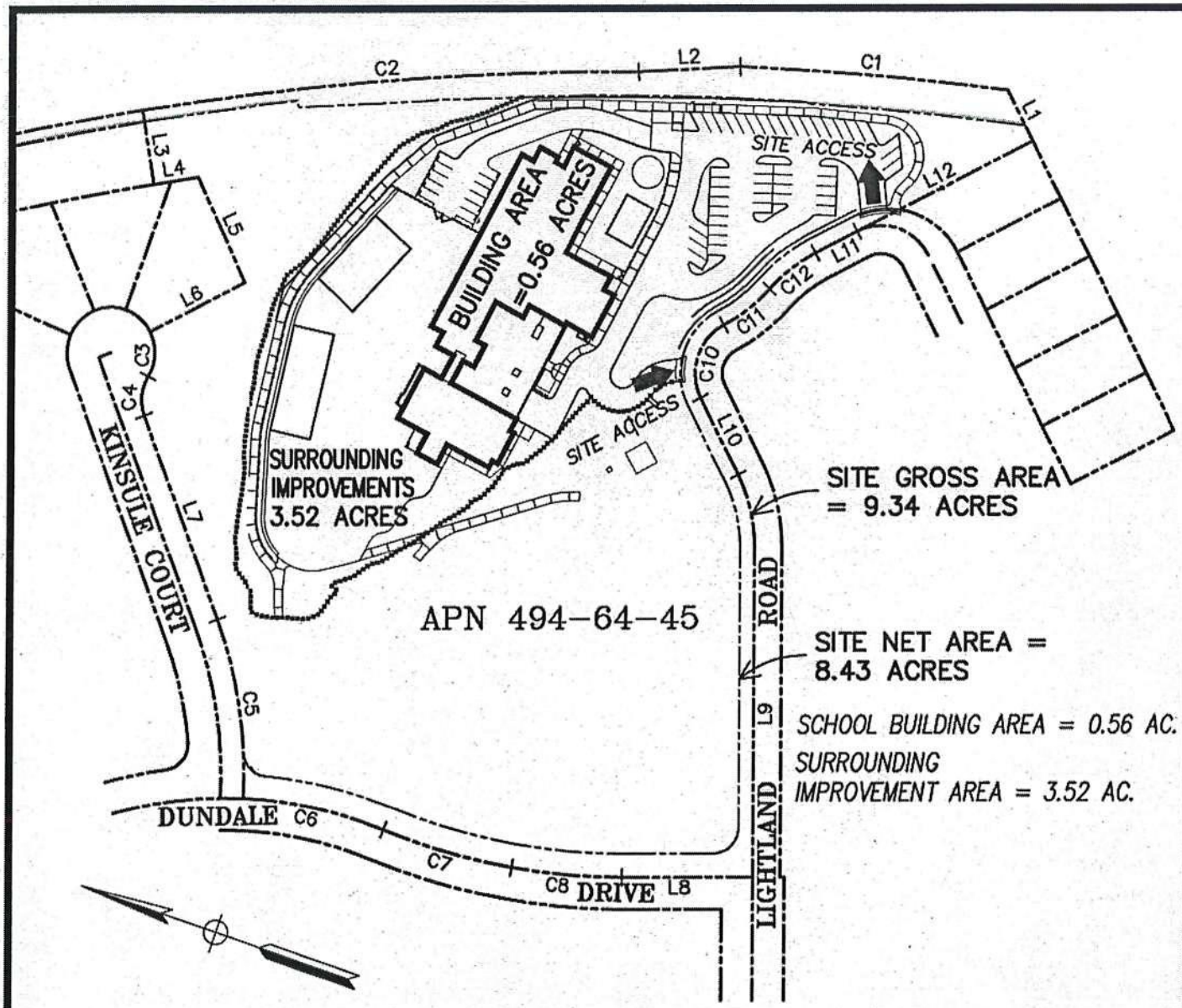
FRANKLIN-MCKINLEY SCHOOL DISTRICT

By: _____
Name: Larry Aceves
Title: Superintendent
Date: 01/13/04

EXHIBITS

EXHIBIT A – SITE MAP
EXHIBIT B – INSURANCE REQUIREMENTS
EXHIBIT C – HAZARDOUS MATERIALS

EXHIBIT A
SITE MAP



LINE TABLE		
NO.	LENGTH	DIRECTION
L1	53.00'	S44°10'00"W
L2	96.58'	S21°40'47"E
L3	70.00'	N62°06'11"E
L4	42.55'	N27°53'49"W
L5	107.34'	N46°35'00"E
L6	100.00'	S46°00'00"E
L7	202.03'	N50°46'00"E
L8	124.28'	N19°00'00"W
L9	307.09'	S71°00'00"W
L10	80.49'	S44°10'00"W
L11	44.30'	N45°50'00"W
L12	186.00'	N45°50'00"W

CURVE TABLE				
NO.	RADIUS	DELTA	TANGENT	LENGTH
C1	2893.14'	5°02'52"	127.53'	254.89'
C2	2886.14'	9°25'06"	237.75'	474.43'
C3	42.00'	58°31'15"	23.53'	42.90'
C4	42.00'	51°45'15"	20.37'	37.94'
C5	422.00'	23°08'31"	86.40'	170.45'
C6	400.00'	19°51'28"	70.02'	138.63'
C7	600.00'	12°07'35"	63.73'	126.99'
C8	600.00'	10°08'54"	53.28'	106.27'
C10	50.00'	90°00'00"	50.00'	78.54'
C11	150.00'	21°02'22"	27.85'	55.08'
C12	150.00'	21°02'22"	27.85'	55.08'

UNDERWOOD & ROSENBLUM, INC.
civil engineers and surveyors
1630 Oakland Road Ste. A114 San Jose, Ca. 95131
Tel. No. (408) 453 1222 Fax No. (408) 453 1207

RAMBLEWOOD PARK SCHOOL

EXHIBIT A

SAN JOSE CALIFORNIA

Date: 12-15-03
Scale 1"=150'
Job No. J03026
Sheet 1 of 1

EXHIBIT B
INSURANCE REQUIREMENTS

District and City and/or their contractors and consultants shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance hereunder by the City, the District, their agents, representative employees or subcontractors respectively. District and City may meet these requirements by self-insurance or through the Santa Clara County Schools Insurance Group.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/96) covering Commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Commercial General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" for CG 0001), including X, C, U (Explosion, Collapse and Underground).

2. Insurance Services Office form number CA 0001 (Ed. 12/93) covering Automobile Liability, code I "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "nonowned" autos.

3. Workers' Compensation insurance as required by the Labor code of the State of California and Employers Liability insurance.

4. ***By District During Construction or Improvements:*** Course of Construction insurance form providing for "All Risks" of loss. ***After construction:*** Property Insurance including but not limited to fire and lightning insurance (with an extended coverage endorsement and with vandalism and malicious mischief endorsement) on all structures, facilities and improvements consisting any part of the project. Said extended coverage endorsement shall cover loss or damage by explosion, windstorm, hail, riot, civil commotion, aircraft, vehicle damage, smoke and such hazards as are normally covered by such endorsement, if such coverage is available.

B. Minimum Limits of Insurance.

City and District shall maintain limits no less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage, if Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Site or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

4. ***By District During Construction or Improvements:*** Course of Construction Insurance in the amount of the completed value of the Project. ***After construction:*** Property Insurance: Including All Risk, 100% Replacement Cost for the value of all on all structures, facilities and improvements consisting of any part of the project. Less a deductible amount of not more than $100,000.

5. District shall cause its consultants as listed below to maintain Project Professionals errors and omissions insurance no less than the following limits: $1,000,000 per occurrence

    1. Architect
    2. Structural Engineer
    3. Civil Engineer
    4. Mechanical Engineer
    5. Electrical Engineer
    6. Any other professional deemed necessary

This professional liability coverage shall be maintained for a minimum of five (5) years after completion of construction of the School and Surrounding Improvements.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared by the District to the City or by the City to the District. Such deductibles shall be based on insurance industry standard deductibles, or the ability to prove financial responsibility.

D. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages.

(i.) For District policies, the City of San Jose, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the District; products and completed operations of the District, premises owned, leased or used by the District; or automobiles owned, leased, hired or borrowed by the District. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors, save for claims arising out of the presence of any Pre-existing Hazardous Substances on the Site if such contamination was not increased, exacerbated or worsened by any negligent acts (active or passive) or willful misconduct of the District, its agents, contractors, employees or assigns.

(ii.) For City policies, the District, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the City; products and completed operations of the City, premises owned, leased or used by the City; or automobiles owned, leased, hired or borrowed by the City. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officials, employees, agents and contractors, save for claims arising out of the presence of any Pre-existing Hazardous Substances on the Site if such contamination was not increased, exacerbated or worsened by any negligent acts (active or passive) or willful misconduct of the City, its agents, contractors, employees or assigns.

(iii.) With regard to the District's use and occupancy of the Premises, the District's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or contractors shall be excess of the District's insurance and shall not contribute with it. With regard to the City's use and occupancy of the Premises, the City's insurance coverage shall be primary insurance as

respects the District, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the District, its officials, employees, agents, or contractors shall be excess of the City's insurance and shall not contribute with it.

(iv.) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District or the City and the respective officials, employees, agents or contractors of each.

(v.) District coverage shall state that the District's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. City coverage shall state that the City's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages.

For District policies, each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days prior written notice has been given to the City. For City policies, each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days prior written notice has been given to the District.

E. Acceptability of Insurers.

Insurance where purchased is to be placed with insurers that are equal to "A-VII from the Best Guide" or better and are acceptable to the City's Risk Manager for District policies or the District's Risk Manager for City policies.

F. Verification of Coveraqe.

Each party shall furnish the other with certificates of insurance or Afffidavits of Self-insurance and with original endorsements where insurance is purchased, affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of District insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

City of San Jose
c/o Risk Management
801 N. First Street, Room 110
San Jose, CA 95110-1716

Proof of City insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the District's Risk Manager:

Franklin-McKinley School District
c/o Risk Manager
645 Wool Creek Drive
San Jose, CA 95112

G. Subcontractors

District shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. If either party fails or refuses to procure or maintain insurance required by this Ground Lease, the other party shall have the right, at its election, and without notice, to procure and maintain such insurance. The premiums paid by the party failing to procure or maintain insurance or self-insurance shall be treated as additional rent due from the other party, to be paid on the first day of the month following the date of the payment of such premiums, stating the amounts paid and the name of the insured(s).

I. Subject to the provisions of the paragraph immediately following, all proceeds of insurance with respects to loss or damage to Improvements to be maintained and repaired by either party during the term of this Lease shall be payable under the provisions of the policy of insurance jointly to District and City, said proceeds shall constitute a trust fund to be used for the repair, restoration or reconstruction of the Improvements in accordance with the plans and specifications approved in writing by City.

In the event this Lease is terminated by mutual agreement of the City and District, and the Improvements are not repaired, restored, or reconstructed, the insurance proceeds shall be jointly retained by the Lessor and Lessees and shall be applied to restore the Site to a neat and clean condition, and finally any excess shall be paid to Lessee.

EXHIBIT C

DEFINITION OF HAZARDOUS MATERIALS

For purposes of this Agreement, the term "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

MILLER BROWN & DANNIS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

COPY

Leslie G. Miessner
Attorney at Law
lmiessner@mbdlaw.com

SAN FRANCISCO

January 16, 2004

VIA OVERNIGHT MAIL
Barbara K. Jordan
Senior Deputy City Attorney
City of San Jose
151 W. Mission Street
San Jose, CA 95110

Re: Ramblewood Park Elementary School;
Lease Between City of San Jose and Franklin-McKinley School District;
Our file: 3145.1.005.3

Dear ~~Ms.~~ Barbara Jordan:

Enclosed is a fully executed original of the lease between the City of San Jose and the Franklin-McKinley School District for the Ramblewood Park school site. The District has retained the other fully executed original.

Thank you again for all of your work on this matter.

Very truly yours,

MILLER BROWN & DANNIS

Leslie

Leslie G. Miessner

LGM\mkg

Enclosure

cc: Rob Williams (w/Enclosure, via U.S. mail)

E:\Wp\Clients\3145\10053\Jordan 04.0116.doc

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Fax: 415/543-4384

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SAN DIEGO
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San Diego, CA 92101
Tel: 619/595-0202
Fax: 619/702-6202

LOCAL NUMBERS
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Monterey/San Benito, CA
Tel: 831/663-0470

Los Angeles, CA
Tel: 310/642-1123

Costa Mesa, CA
Tel: 714/662-6977

www.mbdlaw.com

To: JANE PEREZ **Risk Management** **PHONE: 2853** **FAX: 3204**	The following must be forwarded to Risk Management with this request: ___ Completed Form 149-7 ___ Copy of face page of contract ___ Copy of insurance requirements from contract

NOTIFICATION OF CONTRACT IN PROCESS
(FORM 149-7)

Date: 11/8/2004 Linda Lear 6084

Contractor: **Franklin McKinley School District**	Contractor Phone: 283-6070
Purpose: **for lease and design and construction of Ramblewood Park Improvements**	Value: $10 M
Term: **Period Begin:**	**Period End: 11/30/2044**
Type: **City Facility L**	**New**

Department Contact:

Department of Parks, Recreation and Neighborhood Services
Contracts Administration
277-4572 phone / 287-4465 fax

Program Staff: Brian Hartsell Phone: 277-2731

Notification of Compliance with Insurance Requirements

Comments: Jane - please let me know when this clears - Thanks - Beca x4572

Risk Management Signature Date 1/20/05

Date Forwarded to City Clerk

Notification of Compliance with Bond Requirements

City Clerk Signature Date