Meeting Packet

Governing Board Meeting Agenda

Governing Board Meeting Agenda

CABRILLO UNIFIED SCHOOL DISTRICT

District Office Board Room
498 Kelly Avenue, Half Moon Bay, CA 94109
November 9, 2017
7:00 PM (Closed Session 6:00 PM)

1. CALL TO ORDER - 6:00 P.M.

2. ROLL CALL / QUORUM

___ Ms. Freya McCamant, President
___ Mr. Rob Pappalardo, Vice President
___ Ms. Sophia Layne, Clerk to the Governing Board
___ Ms. Kimberly Hines, Member
___ Dr. Kirk Riemer Ph.D, Member

3. COMMENTS FROM THE PUBLIC RELATED TO ITEMS ON THE CLOSED SESSION AGENDA

Anyone wishing to address the Board regarding any of the Closed Session matters may do so at this time.

4. RECESS TO CLOSED SESSION

a. Pupil Personnel/Student Matters (Education Code §35146).

   The Board may hear expulsion cases and consider the requests from students for re-admittance following expulsion. Also, the Board may review student disciplinary reports, exemption requests, and other student related matters that are regarded to be confidential according to Education Code. The Education Code requires closed session in these cases to prevent disclosure of confidential student record information.

b. Public Employee Discipline/Dismissal/Release (Government Code §54954.5, §54957).

c. With respect to every item of business to be discussed in closed session pursuant to (Government Code §54957.6): Update School Facilities Construction.

d. Conference Regarding Labor Negotiations with District-Designated Representatives Dannis/Wolliver/Kelley, Jane Yuster, John Corry (Government Code §54957.6).

   i. Cabrillo Unified Teachers' Association

   ii. California School Employees' Association, Chapter 485

5. RECONVENE OPEN SESSION – 7:00 P.M.

Report action from Closed Session: if applicable.

6. PLEDGE OF ALLEGIANCE

7. ADOPTION OF AGENDA AS PRESENTED / AMENDED

8. STUDENT / STAFF / COMMUNITY RECOGNITION

The Governing Board recognizes Mr. Joel Altamirano, Maintenance Custodian. Mr. Altamirano has been working at Farallone View Elementary School for the last 10 years. During his service at Farallone View, he has performed above and beyond the call of duty. Joel always greets parents and staff with a smile, is always willing to serve others with the utmost respect and dignity.

9. COMMENTS FROM THE PUBLIC RELATED TO ITEMS NOT ON THIS AGENDA

Public Participation at Board Meetings

The Board of Education encourages your participation in its deliberations. If you wish to address the Board on an agenda item, please fill out a speaker card located on the agenda table at the back of the room and present it to the Administrative Assistant seated to the immediate left of the Superintendent prior to the item being called. Any additional materials you choose to present will be copied and presented to all Board members following the meeting. The Board President will randomly call on persons submitting cards. The general order of discussion on any particular agenda item during the course of a meeting is: 1) Staff presentation on item, 2) Public comment, and 3) Board deliberation and action, if so warranted. If you wish to address the Board on a matter that is not on the agenda, you may speak during the "Comments from the Public" portion of the meeting that is held near the beginning of the meeting following the same general procedures noted above. Board members are legally prohibited from discussing non-agenda items and, therefore, cannot respond to items presented at this time. Open session is audio and/or video recorded.

Board agendas are often long and time is limited. For that reason, the Board reserves the right to limit the time allocated to each speaker (three minutes) as well as the cumulative time allocated to multiple speakers who are addressing the same topic (twenty minutes). The presiding officer may rule out of order persons who unduly interrupt or otherwise interfere with the orderly conduct of business, or who use defamatory, abusive, or profane language. Irrelevant or redundant presentations may likewise be ruled out of order. In the unlikely event that the behavior of an individual is such that the Board is unable to continue to conduct its business in an orderly manner, the Board President may direct the offending individual(s) to vacate the meeting room. Finally, a citizen may place an item on the Board Agenda by submitting a written request and supporting information to the Superintendent's Office.

The Superintendent, in consultation with the Board President, will determine at which upcoming regular Board meeting the item will be scheduled. The person who requested the item will be allowed three minutes at the meeting to present the information to the Board. Following this presentation the Board may address the issue, put the issue on a future agenda for more discussion and action, refer the issue to the administration for follow-up, or take no action. In compliance with the Americans with Disabilities Act, those individuals requiring assistance and/or accommodations or *Spanish language translation in order to participate in this meeting are asked to contact the Superintendent's Office in advance at (650) 712-7112. (*Si usted necesita traducción al español para participar en esta reunión se pide que se ponga en contacto con la oficina del Superintendente antes de esta fecha al (650) 712-7112.)

10. REPRESENTATIVE REPORTS

a. CUTA Representatives

b. CSEA Representatives

11. REPORTS / INFORMATION / PRESENTATIONS

a. Receive Report on Farallone View Elementary School

11.a Green Sheet Report on Farallone View.pdf (p. 8)

11.a.1 Farallone View Board Presentation 11-09-17.pdf (p. 9)

12. DISCUSSION ITEMS

a. Discuss First Reading of New Course Proposal for Half Moon Bay High School

12.b Green Sheet First Reading of New Courses for HMBHS.pdf (p. 16)

12.b.1 Course Presentation HMBHS Adoption 2017-2018.pdf (p. 18)

12.b.2 Agriscience Course Adoption Form.pdf (p. 23)

b. Receive and Discuss the San Mateo County Office of Education Strategic Plan Report, with San Mateo County School Board Vice President Susan Alvaro

12.a Green Sheet SMCOE Strategi Plan Report.pdf (p. 26)

c. Discuss and Hold Public Hearing on Guidelines for the District to Obtain Student Information from Social Media

12.c Green Sheet Social Media Guidelines.pdf (p. 27)

12.c.1 BP6163.pdf (p. 29)

12.c.2 Student Use of Technology Agreement.pdf (p. 33)

13. COMMUNICATIONS

a. Board Members

b. Student Board Member

c. Superintendent

14. CONSENT ITEMS

The Consent Agenda

Consent items are those items judged by staff to be routine in nature, consistent with policy, and reflective of established practice. As a time-saving measure, such items are typically grouped together on what is called the "Consent Agenda" for Board consideration of action. The Consent Agenda requires a motion and a second and must be approved by a roll call vote of the Governing Board. Any Board member may direct that one or more of these items be removed from the Consent Agenda for the purpose of discussion and consideration of action.

a. Approve Overnight Field Trip for Placerville, CA

14.a Green Sheet Field Trip HMBHS.pdf (p. 34)

b. Approve Overnight Fieldtrip to South Lake Tahoe

14.b Green Sheet Field Trip Cunha.pdf (p. 35)

c. Approve Overnight Fieldtrip to San Andreas

14.c Green Sheet Field Trip Cunha 2.pdf (p. 36)

d. Approve Travel for Occupational Therapist, to Attend the American Occupational Therapy Association Specialty Conference: School Based Practice, in Orlando, Florida

14.d Green Sheet Travel for Speech Therapist.pdf (p. 37)

e. Approve Certificated Personnel Report

14.e Green Sheet Certificated Personnel Report.pdf (p. 39)

f. Approve Classified Personnel Report

14.f Green Sheet Classified Personnel Report.pdf (p. 41)

14.f.1 Attachment - Administrative Assitant III Job Description.pdf (p. 43)

g. Accept Donations to Cabrillo Unified School District

14.g Green Sheet Donations.pdf (p. 46)

h. Accept Enrollment Report for the Second Month of the 2017-2018 School Year

14.h Green Sheet Enrollment Report 2nd Month.pdf (p. 48)

14.h.1 Enrollment Report Period 2.pdf (p. 49)

i. Approve Change Orders/Additional Work for the Half Moon Bay High School Track Project

14.i Green Sheet Approve Change Orders.pdf (p. 50)

j. Approve Developer Fee Report for Fiscal 2016-2017

14.j Green Sheet Approve Developer Fee Report 2016-2017.pdf (p. 51)

k. Approve Proposed Agreement for Professional Services with the Law Firm of Dannis Woliver Kelley for the Consideration and Potential Calling for a Bond Election.

14.k green Sheet DWK Agreement for Potential Bond.pdf (p. 53)

14.k.1 Cabrillo USD_DWK GO Bond Fee Agreement.pdf (p. 54)

l. Approve and Adopt Minutes of October 12, 2017 Regular Governing Board Meeting

14.l Green Sheet Board Minutes 10-12-17.pdf (p. 59)

14.l.1 10-12-17 Minutes.pdf (p. 60)

m. Approve and Adopt Minutes of October 28, 2017 Special Governing Board Meeting

14.m Green Sheet Board Minutes 10-28-17.pdf (p. 67)

14.m.1 10-28-17 Minutes.pdf (p. 68)

15. ACTION ITEMS

a. Approve Request of Naming a Farallone View Elementary School Garden, "The Raye Furst Garden"

15.a Green Sheet Ray Furst Garden.pdf (p. 70)

15.a.1 Raye Furst Garden Request.pdf (p. 72)

b. Ratify Lease-Lease Back Agreement with Blach Construction

15.b Ratify of Lease-Lease Back Contract Agreement with Blach Construction Cunha C Building 11.9.pdf (p. 76)

15.b.1 Building C LLB Agreements – Final (October 2017)_3181855_1(DMS).pdf (p. 77)

c. Approve Cabrillo Unified School District Governing Board Policy Updates and Adopt the Proposed Revisions as Recommended by the California School Boards Association

15.c Green Sheet Updated Policies.pdf (p. 235)

15.c.1 Policy Guidesheet Nov 2017.pdf (p. 237)

15.c.2 BP5113 Absences and Excuses.pdf (p. 238)

15.c.3 BP5113.1 Chronic Absence and Truancy.pdf (p. 242)

16. FUTURE BOARD AGENDA ITEMS

a. Governing Board Reorganization for 2018

b. Receive Report on Strategic Education Plan Annual Update Goal 3 and 4

c. Receive Measure S COC Annual Report

d. Receive First Interim Budget Report

e. Approve Policy Maintenance Updates

f. Receive Report on Pilarcitos High School

17. FUTURE EVENTS/DATES/REQUESTS

a. November 10 - Holiday, All Sites Closed

b. November 17 - DELAC Parent Meeting, 6:30 PM, District Office

c. November 20, 21, 22 - Non School Day for all Students

d. November 23-24 - Thanksgiving Holiday Break, All Sites Closed

e. December 5 - Big Lift Meeting, 3:00 PM, District Office

f. December 5 - Chamber Education Committee Meeting, 4:00 PM, District Office

g. December 14 - Regular Governing Board Meeting, 7:00 PM, District Office

18. RETURN TO CLOSED SESSION (IF NECESSARY)

19. ADJOURNMENT OF THE MEETING

Meeting Curfew
Board Bylaw 9323 stipulates that the meeting of the Board shall conclude no later than 10:00 p.m. The Board, at its discretion, may extend the meeting for a defined time to finish the business at hand.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☐ **CONSENT**
☐ **DISCUSSION**
☒ **INFORMATION**

BOARD AGENDA NUMBER: 11.a

BOARD AGENDA ITEM: Receive Report on Farallone View Elementary School

DEPARTMENT: Curriculum and Instruction

CONTACT PERSON: Joy Dardenelle, Assistant Superintendent, Curriculum and Instruction
César Gaytán, Principal, Farallone View Elementary

BACKGROUND INFORMATION:

This report dated November 9, 2017 reflects the current educational environment of Farallone View Elementary School

REPORT/PROPOSAL:

The following report reflects program highlights at Farallone View Elementary School.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Receive report on Farallone View Elementary School.

Cabrillo Unified School District

Farallone View Elementary School

Presentation to the Cabrillo Unified School District Governing Board

Cesar Gaytan, Principal
November 9, 2017

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

What Is the Essence of Farallone View?

- 340 great students from Grades TK-5
- 22 dedicated teachers and 17 staff members
- Long history of generosity and community engagement (PTO, parent volunteers, non-profits)
- A school community dedicated to producing students with a well-balanced academic, artistic, and social/emotional education

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Farallone View supports literacy for all students with an emphasis in reclassification of English Learner students

- Integrated English Language Development allowing students to access the core academic curriculum
- Designated English Language Development (30 min)
- Lexia Core 5 reading intervention
- Formative assessment and data analysis to ensure students stay on track for literacy
- Extended day programs

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

What academic supports do we offer to students during the school day?

- Differentiated Instruction
- Small Group Work in Classroom
- Reading Intervention Teacher
- Student Success Team (SST)
- Junior Police Academy (2nd-5th Grade)
- Reading, Writing, and Math Practice with Volunteers (K-1 Parents)

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

What academic supports do we offer to students and families after school?

- Extended Academic Center for 1st - 5th (on site Mon-Thur)
- Moonridge Reading Program (Sheriff's Assistance League)
- Reading Partnership with ALAS (Helping Latinos Reach their Dream in Spanish) at Ted Adcock
- Parent Literacy Project (Montara & Moonridge)

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Academic Project Based Learning

- All of our academics focus on the themes of Environmental Education and Stewardship





FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Artistic Education

- Ms. Reiss, Art Teacher & Art in Action
- Ms. Kitty, Music Teacher





FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Kinesthetic Learning

- Ms. Angelle, Upper Grades
- Ms. Goodell, Lower Grades





FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Cabrillo Unified School District

Social Emotional Learning Partnership with Niroga

- Dynamic Mindfulness



FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

What social emotional supports do we offer to students during the school day?

- School Linked Counseling Services
- Smooth Kinder Transition (Star Vista)
- Close Collaboration with Coastside Hope

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

- The Success of Positive Behavior Interventions and Supports
  - Primary focus on playground behavior
  - Reduced discipline referrals from 15 to 1 per week
  - Coach helps with implementation
  - Planned use of Mindfulness for Tier II

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

The educational experience of our students in enhanced by strong family engagement. To increase this at Farallone View we:

- A team of 9 attended the Family Engagement Institute at San Mateo County Office of Education. We created 2 goals.
  - Goal 1: Using parent meetings to provide families with information linked to student learning
  - Goal 2: Teachers will volunteer to share additional student information that can be combined with home strategies

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Signature Events

- Oceans Week
- Continent Day
- Winter Festival
- Garage Sales
- Talent Show







FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

Cabrillo Unified School District

Thank you to our dedicated partners! We cannot do it without you!!!!

- Friends of Farallone View Parent Teacher Organization
- The HEAL Project
- Moonridge Reading Program (Sheriff's Assistance League)
- Kids' Vision Summer STEM Camp for Girls
- Innovate Schools Road to College Program
- Moms Against Poverty Meals for Families
- Mariners' Church
- Meeke & Herritt LLC

FARALLONE VIEW ELEMENTARY SCHOOL
Cabrillo Unified School District

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☐ **CONSENT**
☒ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 12.b

BOARD AGENDA ITEM: Discuss First Reading of New Course Proposal for Half Moon Bay High School

DEPARTMENT: Curriculum/Instruction

CONTACT PERSON: Joy Dardenelle, Assistant Superintendent, Curriculum and Instruction
Tiffany Zammit, Assistant Principal, Half Moon Bay High School

BACKGROUND INFORMATION:

Staff at Half Moon Bay High School developed one proposed course of study that we hope to offer to students in the 2018-2019 school year.

- ADVANCED INTERDISCIPLINARY SCIENCE FOR SUSTAINABLE AGRICULTURE:
  This integrated class combines an interdisciplinary approach to laboratory science and research with agricultural management principles. Students will use the skills and principles learned in the course, including the chemical and biological principles that govern plant science and crop production, to design systems and experiments to solve agricultural management issues currently facing the industry. Additionally, students connect the products create in this class with industry activities to link real world encounters and implement skills demanded by both colleges and careers. The course culminates with an agriscience experimental research project in which students design and conduct an experiment to solve a relevant issue. Final projects will be eligible for Career Development Event competition at Future Farmers of America (FFA) events.

REPORT/PROPOSAL:

The Board is asked to consider approval of this new course of study on a discussion-only basis at this meeting. "New Course of Study Adoption" forms are included in this packet. The Board will be asked to consider formal action to approve this new course of study at the December 14, 2017 Governing Board meeting.

FINANCIAL IMPACT:

Costs related to Advanced Interdisciplinary Science for Sustainable Agriculture will be sustained via the site section allocation 2018-2019 school year. Being a Career Technical Education (CTE) course, it will also be supported via the Career Technical Education Incentive Grant and Perkins Grant funding for the 2017-2018 & 2018-2019 school year.

RECOMMENDATION:

Discuss first reading of new course proposal for Half Moon Bay High School.

RECOMMENDED NEW COURSE ADOPTION

Half Moon Bay High School

New Course Adoptions Recommendations for 2018-2019

November 9, 2017

AGENDA:

- CTE Overview
- Advanced Agriscience

CAREER TECHNICAL EDUCATION (CTE) OVERVIEW

CTE OVERVIEW

- ROP Absorbed
- 15 CTE Industry Sectors
- State Funds generated from the following sources:
  - Carl D. Perkins Grant
  - Career Technical Education Incentive Grant

CTE OVERVIEW

- Pathway Data Reported Annually
- Complete Pathway Includes:
  - Articulation with Community College
  - Student Leadership Organization
    - Future Farmers of America (FFA)
    - SkillsUSA
  - Capstone Course w/min of 2 course Pathway
  - 11-Elements of a High Quality CTE Program
  - CTE Credentialed Teacher

CTE OVERVIEW

- Industry Sectors:
  - Agriculture
  - Arts, Media & Entertainment
  - Building Trades & Construction

ADVANCED AGRISCIENCE

ADVANCED AGRISCIENCE

- Rationale:
  - Aligns with Career Technical Education (CTE) Agriscience Pathway
  - Certificate of Completion and transfer to community college programs
- Partners: North Coast Agriculture Partners (NCAP)
  - Provide necessary support in the following ways:
    - Curriculum Development
    - Pathway Development
    - Recruitment and Retention
    - Employability and Interpersonal Skill Development

AGRICULTURE TIMELINE

2015-2016
- Pilot Sustainable Agriculture – A Biological Approach, adopt and approve course
- Provide feedback to NCAP, get training and attend in-service
- Purchase supplies for following year

2016-2017
- All schools teach Sustainable Agriculture – A Biological Approach, pilot Agriculture Soil Chemistry, adopt and approve
- Provide feedback to NCAP, get training and attend in-service
- Purchase supplies for the following year

2017-2018
- All schools teach Agriculture Soil Chemistry, pilot Advanced Agriscience, adopt and approve
- Provide feedback to NCAP, get training and attend in-service
- Purchase supplies for the following year

2018-2019
- All schools teach Sustainable Agriculture, Agriculture Soil Chemistry, and Advanced Agriscience
- Provide feedback to NCAP, get training and attend in-service
- Input on final purchases

ADVANCED AGRISCIENCE

- FISCAL IMPACT
  - 1 Section from the site to complete the AG Pathway
  - All other supplies will come from North Coast Agriculture Partners, Perkins and/or CTEIG funds

CABRILLO UNIFIED SCHOOL DISTRICT
Version: June 25, 2009 Half Moon Bay, California
Board Policy 6141 Exhibit (2) 6141(a)

CURRICULUM DEVELOPMENT AND EVALUATION
NEW COURSE OF STUDY ADOPTION

Please complete (type) all questions below: (responses may be continued on another sheet)

Date 10/19/2017 **Department** Agriculture

Name of Course Advanced Interdisciplinary Science for Sustainable Agriculture

1. Is this proposal a major revision of an already existing course of study? YES

2. If no, does a written course of study exist for the proposed course? YES

3. What are the vision, beliefs and goals that this course of study will support?

This integrated class combines an interdisciplinary approach to laboratory science and research with agricultural management principles.

4. What needs or issues will the course address?

Using skills and principles learned in the course, including the chemical and biological principles that govern plant science and crop production, students design systems and experiments to solve agricultural management issues currently facing the industry. Additionally, students connect the products create in this class with industry activities to link real world encounters and implement skills demanded by both colleges and careers. The course culminates with an agriscience experimental research project in which students design and conduct an experiment to solve a relevant issue. Final projects will be eligible for Career Development Event competition at FFA events.

5. What research and/or data support this course?

A group of Agriculture teachers collaborated and created new curriculum for the Advanced Interdisciplinary Science for Sustainable Agriculture course. This group has shared all curriculum with current Agriculture teachers who will be implementing the new courses across Northern California.

6. If the proposal is to improve a current course of study, how will current student performance outcomes be enhanced?

The new curriculum is aligned to the Next Generation Science Standards (NGSS) and Common Core State Standards (CCSS). Students will interact with more hands on laboratory activities and gain knowledge of how science and agriculture inform each other. Students will develop a sustainable farm model and portfolio of supporting student research to depict how the two disciplines overlap. This is just one form of assessment to be used within the class.

7. Are there alternatives to this approach?

Currently there are no other courses at the Half Moon Bay High School Campus that students could take in the place of the course proposed.

8. What student learning will occur as a result of this proposal?

The course is organized into five major sections, or units, each with a guiding question. They are as follows:

- Unit 1: "Research Methods in Agriculture"
- Unit 2: "Plant Systems"
- Unit 3: "Animal Systems"
- Unit 4: "Natural Resources"
- Unit 5: "Food Systems"

9. Describe the assessment process and the way in which success will be measured?

Formative, summative and diagnostic assessments will occur throughout the course.

10. What are the costs (start-up and on-going) of this proposal?

The courses texts, professional development and supplies are fully funded by the North Coast Agriculture Partners. The site will incur fiscal responsibility for section allocation needed to run these sections.

11. What instructional strategies are planned?

Lecture, student driven research both individually and in a group setting, use of multimedia via technology as an instructional tool, mini-labs, and full scientific labs.

12. What instructional supplies, textbooks, and other resources will be necessary?

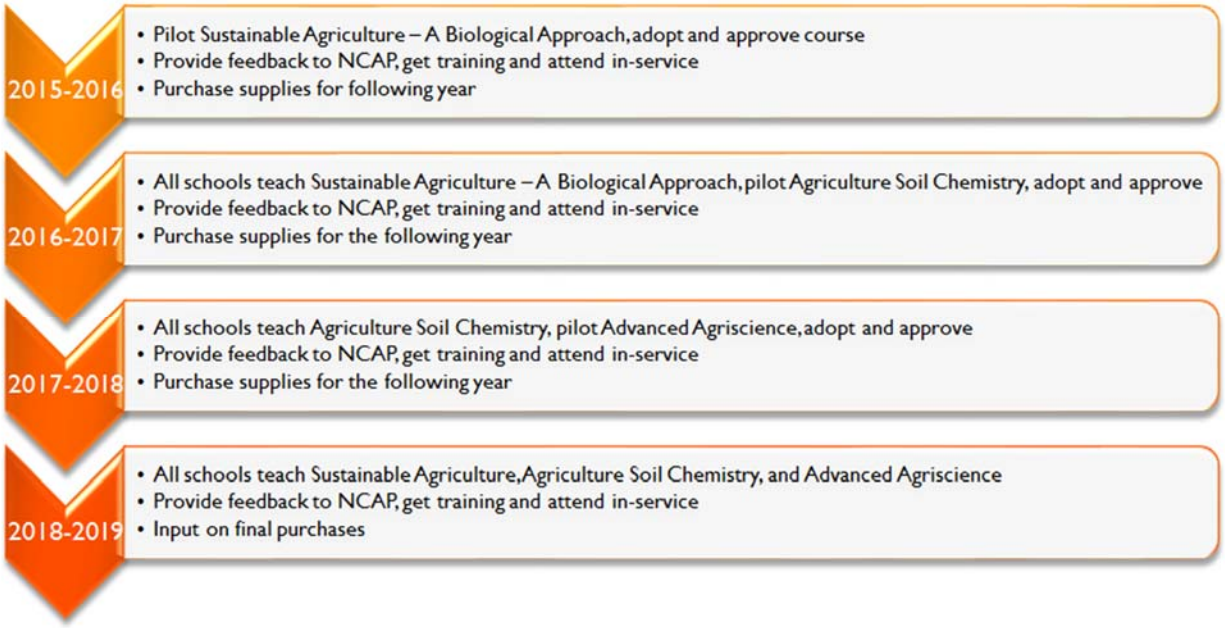
The pilot schools will give a list of materials needed and a recommendation of a textbook. North Coast Agriculture Partners will fully fund all instructional supplies and other resources needed to run the course.

13. What impact may this course have on the school community (master schedule, other curricula, other programs)?

The new course will impact the master schedule with the addition of a section to the Agriculture Agriscience CTE pathway. However, as the new course is introduced to Half Moon Bay High School Agriculture Department, there are ample opportunities to continue to work closely with not only local agriculture industry leaders but to collaborate with local environmental agencies as well.

14. Once the proposal is in place, who will implement the program, monitor its process, collect, and analyze student achievement data? Please provide a timeline.

- Gayle Smith: Agriculture Teacher
- Tiffany Zammit: Assistant Principal of Curriculum & Instruction
- John Nazar: Principal



CABRILLO UNIFIED SCHOOL DISTRICT
Version: June 25, 2009 Half Moon Bay, California
Board Policy 6141 Exhibit (2) 6141(a)

CURRICULUM DEVELOPMENT AND EVALUATION
NEW COURSE OF STUDY ADOPTION

Approved by:

_____	_____
Teacher(s) Introducing the Course	Date
_____	_____
Department Chairperson	Date
_____	_____
Approval - Principal's Signature	Date
_____	_____
Signature of the Assistant Superintendent	Date

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☐ **CONSENT**
☒ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 12.a

BOARD AGENDA ITEM: Receive and Discuss the San Mateo County Office of Education Strategic Plan Report, with San Mateo County School Board Vice President Susan Alvaro

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

In 2016, the San Mateo County Office of Education published their strategic plan entitled "Excellence and Equity in Education". The plan highlights both the values and goals that will drive the county office for the period of 2016-2021.

REPORT/PROPOSAL:

San Mateo County School Board Vice President Susan Alvaro will address the Board on the key components of the strategic plan. As part of a countywide outreach initiative, County Board Members are visiting San Mateo County's 23 school districts to share information about the role of the County Board and to share their strategic goals for the year ahead. She would like to engage the Board in discussion and receive their input on the plan. Ms. Alvaro represents the trustee area on the County Board that includes Cabrillo Unified, La Honda-Pescadero, and Belmont-Redwood Shores School Districts.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Receive and discuss the San Mateo County Office of Education Strategic Plan Report, with San Mateo County School Board Vice President Susan Alvaro.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☐ **CONSENT**
☒ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 12.c

BOARD AGENDA ITEM: Discuss and Hold Public Hearing on Guidelines for the District to Obtain Student Information from Social Media

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

Pursuant to California Education Code section 49073.6, any time a school district considers a plan to gather pupil information obtained from social media, it needs to notify students and parents about the proposed program and provide the opportunity for public comment prior to adoption of the program. Adopted BP 6163.4 is attached for reference.

REPORT/PROPOSAL:

The Coalition for Safe Schools and Communities has launched two important protocols, the Suicide Prevention Toolkit and the Student Threat Assessment Protocol, and District administrators have received training in their use. In some situations, a school's ability to effectively respond to a school or pupil safety concern will be seriously hindered if school staff are not able to monitor student social media for student safety reasons, including instances or suspicions of:

**Cyberbullying* -- for example, Student A complains to school staff that Student B is bullying her at school and on the internet. Reviewing Student B's Facebook account could help corroborate the claims.

**Student self harm* -- for example, a student's friend's report that Student A is threatening to harm herself, but Student A denies this to her counselor. Reviewing Student A's Instagram posts could help reveal the seriousness of these fears.

**Campus safety* -- for example, threatening graffiti using unusual symbols shows up at school and Student A is suspected of being involved. A review of his social media could help the investigation.

*_Threat assessment_ -- for example, a student reports that another student posted a warning on Facebook “not to come to school on Friday.” A review of Facebook posts would provide important context necessary to determine the appropriate level of response.

The district does not intend to make a practice of reviewing student social media accounts. However, from time to time we may need to investigate publicly available online content to ensure a safe learning environment. This evening’s discussion is a prerequisite to school staff’s ability to collect and use student information gathered from any non-educational and publically viewable social media source.

FINANCIAL IMPACT:

There is no fiscal impact on the General Fund.

RECOMMENDATION:

Discuss and hold public hearing on guidelines for the District to obtain student information from Social Media.

Cabrillo USD

Board Policy

Student Use Of Technology

BP 6163.4
Instruction

The Governing Board intends that technological resources provided by the district be used in a safe, responsible, and proper manner in support of the instructional program and for the advancement of student learning. All students using these resources shall receive instruction in their proper and appropriate use.

(cf. 0440 - District Technology Plan)
(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 4040 - Employee Use of Technology)
(cf. 6163.1 - Library Media Centers)

Teachers, administrators, and or library media specialists are expected to review the technological resource and online sites that will be used in the classroom or assigned to students in order to ensure that they are appropriate for the intended purpose and the age of the students.

The Superintendent or designee shall notify students and parents/guardians about authorized uses of district technology, user obligations and responsibilities, and consequences for unauthorized use and/or unlawful activities in accordance with this Board policy and the district's Acceptable Use Agreement. (www.cabrillo.k12.ca.us/cusd_pdf_files/tcc.pdf)

(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)
(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities)

District technology includes, but is not limited to, computers, the district's computers network including servers and wireless computer networking technology (Wi-Fi), the Internet, email, USB drives, wireless access points (routers), tablet computers, smart phones and smart devices, telephones, cellular telephones, personal digital assistants, pagers, MP3 players, wearable technology, any wireless communication device including emergency radios, and/or future technological innovations, whether accessed on or off site or through district owned or personally owned equipment or devices.

Before a student is authorized to use the district technology, the student and his/her parent/guardian shall sign and return the Acceptable Use Agreement. In that agreement, parent/guardian shall agree not to hold the district or any district staff responsible for the failure of any technology protection measures or user mistakes or negligence and shall agree to indemnify and hold harmless the district and district staff for any damages or costs incurred.

(cf. 6162.6 - Use of Copyrighted Materials)

The district reserves the right to monitor student use of technology within the jurisdiction of the district without advance notice or consent. Students shall be informed that their use of district technology, including, but not limited to, computer files, email, text messages, instant messaging, and other electronic communications, is not private and may be accessed by the district for the purpose of ensuring proper use. Students have no reasonable expectation of privacy in use of the district technology. Students' personally owned devices shall not be searched except in cases where there is a reasonable suspicion, based on specific and objective facts, that the search will uncover evidence of a violation of law, district policy, or school rules.

(cf. 5145.12 - Search and Seizure)

The Superintendent or designee may gather and maintain information pertaining directly to school safety or student safety from the social media activity of any district student in accordance with Education Code 49073.6 and BP/AR 5125 - Student Records.

(cf. 5125 - Student Records)

Whenever a student is found to have violated Board policy or the district's Acceptable Use Agreement, the principal or designee may cancel or limit a student's user privileges or increase supervision of the student's use of the district's equipment and other technological resources, as appropriate. Inappropriate use also may result in disciplinary action and/or legal action in accordance with law and Board policy.

(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)
(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities)

The Superintendent or designee, with input from students and appropriate staff, shall regularly review and update procedures to enhance the safety and security of students using district technology and to help ensure that the district adapts to changing technologies and circumstances.

Internet Safety

The Superintendent or designee shall ensure that all district computers with Internet access have a technology protection measure that protects against access to visual depictions that are obscene, child pornography, or harmful to minors and that the operation of such measures is enforced. (20 USC 6777; 47 USC 254; 47 CFR 54.520)

To reinforce these measures, the Superintendent or designee shall implement rules and procedures designed to restrict students' access to harmful or inappropriate matter on the Internet and to ensure that students do not engage in unauthorized or unlawful online activities.

Harmful matter includes matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest and is matter which depicts or describes, in a patently offensive way, sexual conduct and which lacks serious literary, artistic, political, or scientific value for minors. (Penal Code 313)

The district's Acceptable Use Agreement shall establish expectations for appropriate student conduct when using the Internet or other forms of electronic communication, including, but not limited to, prohibitions against:

1. Accessing, posting, submitting, publishing, or displaying harmful or inappropriate matter that is threatening, obscene, disruptive, or sexually explicit, or that could be construed as harassment or disparagement of others based on their race/ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs

(cf. 5131 - Conduct)
(cf. 5131.2 - Bullying)
(cf. 5145.3 - Nondiscrimination/Harassment)
(cf. 5145.7 - Sexual Harassment)
(cf. 5145.9 - Hate-Motivated Behavior)

2. Intentionally uploading, downloading, or creating computer viruses and/or maliciously attempting to harm or destroy district equipment or materials or manipulate the data of any other user, including so-called "hacking"

3. Distributing personal identification information, including the name, address, telephone number, Social Security number, or other personally identifiable information, of another student, staff member, or other person with the intent to threaten, intimidate, harass, or ridicule that person

The Superintendent or designee shall provide age-appropriate instruction regarding safe and appropriate behavior on social networking sites, chat rooms, and other Internet services. Such instruction shall include, but not be limited to, the dangers of posting one's own personal identification information online, misrepresentation by online predators, how to report inappropriate or offensive content or threats, behaviors that constitute cyberbullying, and how to respond when subjected to cyberbullying.

Legal Reference:
EDUCATION CODE
49073.6 Student records; social media
51006 Computer education and resources
51007 Programs to strengthen technological skills
60044 Prohibited instructional materials
PENAL CODE
313 Harmful matter
502 Computer crimes, remedies
632 Eavesdropping on or recording confidential communications
653.2 Electronic communication devices, threats to safety
UNITED STATES CODE, TITLE 15

6501-6506 Children's Online Privacy Protection Act
UNITED STATES CODE, TITLE 20
6751-6777 Enhancing Education Through Technology Act, Title II, Part D, especially:
6777 Internet safety
UNITED STATES CODE, TITLE 47
254 Universal service discounts (E-rate)
CODE OF FEDERAL REGULATIONS, TITLE 16
312.1-312.12 Children's Online Privacy Protection Act
CODE OF FEDERAL REGULATIONS, TITLE 47
54.520 Internet safety policy and technology protection measures, E-rate discounts
COURT DECISIONS
New Jersey v. T.L.O., (1985) 469 U.S. 325
Management Resources:
CSBA PUBLICATIONS
Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007
FEDERAL TRADE COMMISSION PUBLICATIONS
How to Protect Kids' Privacy Online: A Guide for Teachers, December 2000
WEB SITES
CSBA: http://www.csba.org
American Library Association: http://www.ala.org
California Coalition for Children's Internet Safety: http://www.cybersafety.ca.gov
Center for Safe and Responsible Internet Use: http://csriu.org
Federal Communications Commission: http://www.fcc.gov
Federal Trade Commission, Children's Online Privacy Protection:
http://www.ftc.gov/privacy/privacyinitiatives/childrens.html
U.S. Department of Education: http://www.ed.gov

Policy: 6163.4 **CABRILLO UNIFIED SCHOOL DISTRICT**
Adopted: June 25, 2009 **Half Moon Bay, California**
Revised: November 12, 2015

Cabrillo USD

Exhibit

Student Use of Technology

E 6163.4
Instruction

Cabrillo Unified School District

AGREEMENT FOR STUDENT USE OF TECHNOLOGY

Read, sign and return this form to school along registration/emergency information.

_____ _____ _____
Student Last Name First Name Grade

I have read and discussed with my child the Cabrillo Unified School District Technology Board Policy and Code of Conduct. I understand that District technological resources are meant to be used for educational purposes only and I understand the consequences of misuse of technology and Internet access.

As the parent or guardian of the student named above, I agree to allow him/her access to technology and the Internet services of the Cabrillo Unified School District. Further, I agree to release and hold harmless the Cabrillo Unified School District and its officers, board members, employees and agents from and against any and all liability, loss, expense, or claim for injury or damages students may have arising from the use of the District's technological resources.

_____
Parent/Guardian Signature

_____
Parent/Guardian Name (Print)

_____
Date

I have read, understand, and agree to abide with the Cabrillo Unified School District Technology Board Policy and Code of Conduct.

_____
Student Signature

_____
Date

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.a

BOARD AGENDA ITEM: Approve Field Trip for Half Moon Bay High School Girls Basketball to Placerville, California, December 28 - 30, 2017

DEPARTMENT: Pupil Services

CONTACT PERSON: John Corry, Assistant Superintendent, Personnel and Pupil Services

BACKGROUND INFORMATION:

Board Policy 6153 allows the Governing Board to permit students to participate in field trips.

REPORT/PROPOSAL:

Justin Ferdinand, Athletic Director, Half Moon Bay High School, is requesting that the Governing Board approve a field trip to Placerville, California, December 28 - 30, 2017 to participate in a Girls Basketball tournament. There will be approximately 22 students, 2-4 certificated staff members and 8 additional adults. The students, teacher/coach and chaperones will travel from Half Moon Bay to Placerville by private transportation. The travel party will be staying at the Courtyard Sacramento-Folsom, 2575 Iron Point Road, Folsom, California 95630, (916) 984-7624.

FINANCIAL IMPACT:

There is no financial impact on the district for this trip. Funding for this trip will come from the Cougar Boosters account.

RECOMMENDATION:

Approve Field Trip for Half Moon Bay High School Girls Basketball to Placerville, California, December 28 - 30, 2017.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.b

BOARD AGENDA ITEM: Approve Field Trip for Cunha Boys Basketball Team to San Andreas, California, December 9 - 10, 2017

DEPARTMENT: Pupil Services

CONTACT PERSON: John Corry, Assistant Superintendent, Personnel and Pupil Services

BACKGROUND INFORMATION:

Board Policy 6153 allows the Governing Board to permit students to participate in field trips.

REPORT/PROPOSAL:

Rick Campbell, Cunha Intermediate School teacher and coach of the Boys Basketball Team, is requesting that the Governing Board approve a field trip to San Andreas, California on December 9 - 10, 2017 to participate in a Boys Basketball tournament. There will be approximately 10 students, and they will be chaperoned by one certificated staff member and 6-10 additional adults. The students, teacher/coach and chaperones will travel from Half Moon Bay to San Andreas, California, by private transportation. The travel party will be staying at the Best Western Amador Inn, 200 S. State Highway 49, Jackson, CA 95642, (209) 223-0211.

FINANCIAL IMPACT:

There is no financial impact on the district for this trip. The trip is paid for by the fundraising efforts of Cunha parents.

RECOMMENDATION:

Approve Field Trip for Cunha Boys Basketball Team to San Andreas, California, December 9 - 10, 2017.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.c

BOARD AGENDA ITEM: Approve Field Trip for Cunha Boys Basketball Team to South Lake Tahoe, California, January 12 - 14, 2018

DEPARTMENT: Pupil Services

CONTACT PERSON: John Corry, Assistant Superintendent, Personnel and Pupil Services

BACKGROUND INFORMATION:

Board Policy 6153 allows the Governing Board to permit students to participate in field trips.

REPORT/PROPOSAL:

Rick Campbell, Cunha Intermediate teacher and coach of the Boys Basketball Team, is requesting that the Governing Board approve a field trip to South Lake Tahoe, California on January 12 - 14, 2018 to participate in a Boys Basketball tournament. There will be approximately 10 students, and they will be chaperoned by one certificated staff member and 6-10 additional adults. The students, teacher/coach and chaperones will travel from Half Moon Bay to South Lake Tahoe, California, by private transportation. The travel party will be staying at the Best Western Station House Inn, 901 Park Avenue, South Lake Tahoe, CA 96150, (530) 542-6404.

FINANCIAL IMPACT:

There is no financial impact on the district for this trip. The trip is paid for by the fundraising efforts of Cunha parents.

RECOMMENDATION:

Approve Field Trip for Cunha Boys Basketball Team to South Lake Tahoe, California, January 12 - 14, 2018.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.d

BOARD AGENDA ITEM: Approve Travel for Occupational Therapist, to Attend the American Occupational Therapy Association Specialty Conference: School Based Practice, in Orlando, Florida

DEPARTMENT: Special Education Department

CONTACT PERSON: Meredith Raymond, Director of Special Education

BACKGROUND INFORMATION:

The American Occupational Therapy Association (AOTA) will be hosting a School Based Specialty Conference on December 1-2, 2017 in Orlando, Florida. The conference will offer various sessions such as; supporting transitions from early childhood to high school for students, providing occupational therapy in everyday, collaborative skills supporting knowledge, policy and practice, evaluating and promoting effective school practice, and Occupational Therapist's role in promoting social participation at the school sites.

Mr. Isaac Stahlhut, is the Occupational Therapist for the District. Currently he serves 51 students Districtwide. The conference will provide important information as well as skills that Isaac could use to improve the services he currently offers to students.

REPORT/PROPOSAL:

The Governing Board is asked to approve travel for Isaac Stahlhut, Occupational Therapist, to attend the AOTA Conference, which will take place December 1-2, 2017 in Orlando, Florida.

FINANCIAL IMPACT:

The Special Education Department funds have been approved to cover the cost of the conference only, total cost $325.00. The cost of lodging and travel expenses will be covered by the attendee, Isaac Stahlhut.

[redacted]

RECOMMENDATION:

Approve travel for Occupational Therapist, to attend the American Occupational Therapy Association Specialty Conference: School Based Practice, in Orlando, Florida.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.e

BOARD AGENDA ITEM: Approve Certificated Personnel Report

DEPARTMENT: Personnel

CONTACT PERSON: John Corry, Assistant Superintendent, Personnel and Pupil Services

BACKGROUND INFORMATION:

The following personnel items are submitted for your ratification/approval.

1. OFFER OF TEMPORARY EMPLOYMENT FOR 2017-2018

Susan Ciccarelli Vana, District School Nurse, District Office, effective November 1, 2017.

2. RECLASSIFICATION OF CERTIFICATED EMPLOYEES FROM TEMPORARY TO PROBATIONARY/PERMANENT STATUS

Teacher	***Site***	***FTE***	***Status***	***Probationary Date***
Taylor, Dustin	HMBHS	0.6	Prob II	8/16/2017
Barragan, Michael	El Granada	1.0	Prob I	8/16/2017
Billy, Sheila	Cunha	1.0	Prob I	8/16/2017
Gould, Claire	HMBHS	1.0	Prob I	8/16/2017
Hees, Gerhardt	HMBHS	1.0	Prob I	8/16/2017
Kim, Jake	HMBHS	1.0	Prob I	8/16/2017
Law, Rebecca	El Granada	1.0	Prob I	8/16/2017
Lorente, Julia	Hatch	1.0	Prob I	8/16/2017
Mas, Esther	Hatch	1.0	Prob I	8/16/2017
Schultz, Steven	District Office	1.0	Prob I	8/16/2017
Soriano, Maria	HMBHS	1.0	Prob I	8/16/2017
Weatherly, Elizabeth	Kings Mountain	1.0	Prob I	8/16/2017
Yerby, Traci	HMBHS	1.0	Prob I	8/16/2017
Miner, Guadalupe	Hatch	1.0	Prob I	8/17/2017
Ogarrio Silva, Jesus	Hatch	1.0	Prob I	8/17/2017
Work, Angela	Hatch	1.0	Prob I	8/17/2017

RECLASSIFICATION OF CERTIFICATED EMPLOYEES FROM TEMPORARY TO PROBATIONARY/PERMANENT STATUS-continued

Sullivan, William	HMBHS	1.0	Prob I	8/18/2017
Evans, Jeffrey	Cunha	1.0	Prob I	8/21/2017
Reiss, Martina	Cunha	0.6	Prob I	9/6/2017

3. OFFERS OF EMPLOYMENT OF SUBSTITUTE TEACHERS

Employee
Monestie, Pamela
Woolsey, Nina

FINANCIAL IMPACT:

Financial impact is included in the budget.

RECOMMENDATION:

Approve the Certificated Personnel report.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.e

BOARD AGENDA ITEM: Approve Classified Personnel Report

DEPARTMENT: Personnel

CONTACT PERSON: John Corry, Assistant Superintendent, Personnel and Pupil Services

BACKGROUND INFORMATION:

The following personnel items are submitted for your ratification/approval.

1. APPROVAL OF EMPLOYEE RECLASSIFICATION

Kathi Bagot, Administrative Assistant III, Maintenance, Operations and Transportation, formerly Clerical Assistant III, Maintenance, Operations and Transportation, effective November 10, 2017.

2. APPROVAL OF JOB DESCRIPTION FOR ADMINISTRATIVE ASSISTANT III

Under the direction of High School Principal or District Office administrator**,** organize, coordinate, schedule and perform office functions; serve as primary assistant to the Principal and coordinate communications between administrators, District and site personnel, parents, students and the general public.

3. OFFERS OF SHORT TERM EMPLOYMENT FOR 2017-2018

Joan Fulp, Adapted PE Support Specialist, Farallone View/El Granada Elementary Schools, effective August 21, 2017.

Anke Geiken, Kinder Movement Tutor, Hatch Elementary School, effective August 21, 2017.

Jane Kinsley, Mental Health Specialist, effective July 1, 2017.

Robin Lise-Nielsen, Music Specialist, Kings Mountain Elementary School, effective August 21, 2017.

Kathy Mion, Special Education Vocational Specialist, Half Moon Bay High School, effective August 21, 2017.

Tom Owen, Special Education Vocational Specialist, Half Moon Bay High School, effective August 21, 2017.

Elizabeth Schuck, Big Lift Coordinator, District Office, effective September 1, 2017.

Ellen Silva, Art Tutor, Pilarcitos High School, effective August 21, 2017.

Hilda Villegas, Transition Navigator, La Costa Adult Education School, effective September 21, 2017.

4. RESIGNATION

Shari Deghi, Adult Education Coordinator, La Costa Adult Education School, effective October 26, 2017.

5. PROMOTION

Cristal Hernandez, Administrative Assistant V, District Office, formerly Administrative Assistant IV, District Office, effective October 23, 2017.

6. RETIREMENT

Margaret Van Horbek, Administrative Assistant V, District Office, effective October 20, 2017. Ms. Van Horbek was hired on May 19, 1983.

FINANCIAL IMPACT:

Financial impact is included in the budget.

RECOMMENDATION:

Approve the Classified Personnel report.

CABRILLO UNIFIED SCHOOL DISTRICT

CLASS TITLE: ADMINISTRATIVE ASSISTANT III

BASIC FUNCTION:

Under the direction of High School Principal or *District Office administrator,* organize, coordinate, schedule and perform office functions; serve as primary assistant to the Principal and coordinate communications between administrators, District and site personnel, parents, students and the general public.

REPRESENTATIVE DUTIES:

ESSENTIAL DUTIES:

- Organize and coordinate a wide variety of clerical and other office functions and activities related to the administration of diverse programs and operations at a high school *or district office*; prioritize and schedule duties and assignments to assure efficiency and effectiveness and meet established time lines work closely with Lead Teachers in assigned programs
- Serve as primary assistant to the Principal *or district office administrator*; make, schedule and arrange appointments, meetings and conferences, assisting with routine administrative matters as appropriate; independently compose letters, memoranda and other material
- Coordinate and facilitate communications and serve as liaison between District and site personnel, parents, students, school and community organizations, translators, and the general public work closely with Lead Teachers in assigned programs
- Communicate with a variety of site and District personnel and administrators to coordinate school operations and maintenance, resolve conflicts and issues and exchange information, contact parents or emergency contacts if students are ill, injured, suspended, immunizations or related matters
- Perform secretarial duties for the Principal or *district office administrator*, assisting with routine administrative matters as appropriate; independently compose letters, memoranda; Type from notes, rough draft or verbal instructions a variety of written materials including correspondence, bulletins, memoranda, calendars, requisitions, records, reports and evaluations
- Assist the Principal or *district office administrator* in the preparation and maintenance of financial, statistical and narrative reports;
  research, compile and organize information
- Initiate budget preparation; work with Lead Teachers in preparing individual budgets to meet needs; prepare forms and assist the Principal in preparing and monitoring budget
- Process requisitions, F-80's, and timesheets; assist Lead Teachers with adjustments and transfers; monitor budgets, review computer print-outs, and balance accounts to assure accuracy
- Compile and organize information for the Principal or *district office administrator*; compose and respond to routine correspondence;
  open, sort, review and route mail
- Coordinate and assist with special events for the high school or district office; assist in selection of personnel and program; assure adherence to legal requirements and Board policies; maintain budget; work with and assist personnel assigned to the event
- Operate a variety of business and office machines including typewriter, calculator, computer, copiers, and communications equipment
- Order a wide variety of equipment, materials, supplies and special items requested by faculty; assure receipt and proper distribution
- Answer phones and greet visitors; take and relay messages; provide information to students, parents, faculty, and site personnel; interpret, apply and explain District policies and school procedures and regulations
- Administer first aid according to established guidelines
- Train and provide work direction to clerical personnel, student assistants and others as assigned
- Coordinate and arrange substitute placement with district office personnel

OTHER DUTIES:

Perform related duties as assigned

KNOWLEDGE AND ABILITIES:

KNOWLEDGE OF:

- School office terminology, practices and procedures
- Modern office practices, procedures and equipment
- Financial and statistical record-keeping techniques
- Health and safety regulations
- Correct English usage, grammar, spelling, punctuation and vocabulary
- District organization, operations, policies and objectives
- Oral and written communication skills
- Interpersonal skills using tact, patience and courtesy
- Telephone techniques and etiquette
- Budget preparation and control
- Operation of standard office machines
- Applicable sections of the State Education Code and other applicable laws
- Letter and report writing skills
- Maintaining proficiency in accounting software and financial applications

ABILITY TO:

- Perform a wide variety of clerical and administrative duties to coordinate school office activities and assist the Principal in a variety of administrative matters
- Perform public relations and communications services for the Principal
- Maintain accurate financial and statistical records
- Add, subtract, multiply and divide quickly and accurately
- Understand and follow oral and written directions
- Compose correspondence independently
- Type or input data at an acceptable rate of speed
- Complete work with many interruptions
- Work independently with little direction
- Establish and maintain cooperative and effective working relationships with others
- Learn, interpret, apply and explain rules, regulations, policies and procedures
- Operate a variety of office machines including typewriter, calculator and copiers
- Maintain good public relations with students, parents, teachers and the public
- Meet schedules and time lines
- Plan and organize work
- Train and provide work direction to others
- Compile and maintain accurate records, verify data and prepare reports
- Work confidentially with discretion
- Communicate effectively both orally and in writing

EDUCATION AND EXPERIENCE:

Any combination equivalent to: graduation from high school supplemented by college-level course work in business or related field and five years of increasingly responsible office or secretarial experience involving frequent public contact

LICENSES AND OTHER REQUIREMENTS:

Valid First Aid Certificate issued by an authorized agency

WORKING CONDITIONS:

ENVIRONMENT:

High school office or district office environment
Subject to considerable distraction and noise from constant interruptions and office activities

PHYSICAL ABILITIES:

- Dexterity of hands and fingers to operate office equipment
- Hearing and speaking to exchange information on the telephone or in person
- Sitting for extended periods of time
- Seeing to review and check documents for accuracy
- Reaching to retrieve and maintain files
- Ability to lift 40 pounds

HAZARDS:

Possible contact with blood and other body fluid when providing first aid.

BOARD AGENDA ITEM
CABRILLO UNIFIED SCHOOL DISTRICT

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.g

BOARD AGENDA ITEM: Approve Donations to Cabrillo Unified School District

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND INFORMATION:

The Governing Board routinely reviews the monthly donation reports.

REPORT/PROPOSAL:

Pursuant to the Governing Board Policy 3290, the Governing Board is to accept donations on behalf of the district or any school in the district.

HALF MOON BAY HIGH SCHOOL 5,660

Sport/Club/Scholarship
Traci & Scott Yerby
Harald Herrmann & Petra Teege
Sarah Riitters
Lisa & Tom Longaker
Claudia & Darien Helmlinger
Darrow Management, Inc.
Corey, Luzaich, de Ghetaldi, Nastari & Riddle, LLP
M. Weston & C. Kleinjans
Coastside Running Club
Richard & Barbara Lohman
Haynes Beffel & Wolfeld
Cotchett, Pitre, and McCarthy, LLP
Mark Eibert

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve donations to Cabrillo Unified School District.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.h

BOARD AGENDA ITEM: Accept Enrollment Report for the Second Month of the 2017-2018 School Year

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND INFORMATION:

The Governing Board routinely reviews the monthly enrollment reports.

REPORT/PROPOSAL:

The enrollment report for the second month of the 2017-2018 school year is being presented to the Governing Board for information.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Accept enrollment report for the second month of the 2017-2018 school year.

CABRILLO UNIFIED SCHOOL DISTRICT
2017-2018 SCHOOL YEAR
ENROLLMENT REPORT

School Month No. **2** **Date:** **10/13/2017**

Grade	El Granada	Farallone View	Hatch	Kings Mountain	Cunha	Half Moon Bay High	Pilarcitos	Home & Independent Study	TOTALS
TK	17	16	13	0	-	-	-	0	46
K	69	58	77	12	-	-	-	0	216
1	49	50	94	10	-	-	-	0	203
2	55	46	100	12	-	-	-	0	213
3	61	46	98	11	-	-	-	0	216
4	71	48	115	13	-	-	-	0	247
5	56	53	87	13	-	-	-	0	209
6	-	-	-	-	259	-	-	0	259
7	-	-	-	-	258	-	-	0	258
8	-	-	-	-	256	-	-	1	257
9	-	-	-	-	-	256	0	1	257
10	-	-	-	-	-	251	1	2	254
11	-	-	-	-	-	220	10	5	235
12	-	-	-	-	-	239	19	7	265
Total Regular Enrollment	378	317	584	71	773	966	30	16	3135
SDC Student Enrollment	22	0	0	0	19	15	0	0	56
TOTAL ENROLLMENT	**400**	**317**	**584**	**71**	**792**	**981**	**30**	**16**	**3191**
Total Enrollment as of 10/14/16	424	319	618	67	793	975	32	22	3250
Difference between 10/14/2016 Total Enrollment and 10/13/2017 Total Enrollment	**-24**	**-2**	**-34**	**4**	**-1**	**6**	**-2**	**-6**	**-59**
Total Enrollment as of 9/15/17	402	315	584	73	792	984	28	14	3192
Difference between 9/15/17 Total Enrollment and 10/13/17 Total Enrollment	**-2**	**2**	**0**	**-2**	**0**	**-3**	**2**	**2**	**-1**

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.i

BOARD AGENDA ITEM: Approval of Change Orders/Additional Work for the Half Moon Bay High School Track Project

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND INFORMATION:

On April 6, 2017, the Governing Board approved a contract for the Half Moon Bay High School Track to Andreini Brothers, Inc. The project which includes site work and construction for track and field events as well as the replacement of the synthetic turf field, including all related and supporting materials, labor and equipment.

At times when work is added or deleted from the original scope of work defined in the contract a change order is submitted.

REPORT/PROPOSAL:

RFP#	Brief Summary	Cost
C082217A (15)	Added verbiage to field signage.	$1,722
C082217A (16)	Added fence per revision.	$5,981
C090617A (17)	Covert support to guard upper wall.	$4,000
C101117A (18)	Set and level containers.	$1,020

FINANCIAL IMPACT:

There is no financial impact to the General Fund. There is an increase of $12,723 to the project.

RECOMMENDATION:

Approval of change orders/additional work for the Half Moon Bay High School Track Project.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.j

BOARD AGENDA ITEM: Approve Developer Fee Report for Fiscal Year 2016-2017

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND:

Government Code Sections 66001 and 66006 requires the District to provide public information on impact fees received from new residential and commercial/industrial development to mitigate the impact of new development on the school facilities. The School District currently collects statutory school fees pursuant to Education Code 17620.

School districts are authorized to levy fees on new development to fund the construction and reconstruction of school facilities. The District's current developer fees ("fees") are $2.97 per square foot for new residential construction and $0.47 per square foot for new commercial and industrial construction. These fees, statutorily set by the State Allocation Board ("SAB"), are subject to a biennial inflationary adjustment in an amount equal to the change in the statewide cost index for Class B construction. On January 25, 2012, the State Allocation Board ("SAB") increased the statutory limit on "Level 1" fees by 7.7% to $3.20 per square foot for new residential construction and $0.51 per square foot for commercial and industrial construction.

The District's last Developer Fee Justification Report ("Report") was completed in 2008. In November 2011, a Request for Proposal was distributed to qualified applicants for an updated Report. In January 2012, SCI Consulting Group was selected by the District to prepare an updated Report in order for the District to continue to levy the maximum allowable fees. In March 2012, the Board ratified the agreement between the District and SCI Consulting for the purposes of preparing the Report.

At the May 10, 2012 Board of Trustees meeting the Board authorized charging $2.97 square foot for residential construction and $0.47 square foot for commercial construction.

REPORT/PROPOSAL:

In the 2016/2017 school year, the District collected $533,528.29 dollars in developer fees.

Beginning Balance	$1,497,290.86
Revenue	$533,528.29
Expenditures	$1,313,296.71
Ending Balance	$717,522.44

FINANCIAL IMPACT:

A decrease in Fund balance, new ending Fund balance $717,522.44.

RECOMMENDATION:

Approve Developer Fee Report for fiscal year 2016-2017.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.k

BOARD AGENDA ITEM: Approve Proposed Agreement for Professional Services with the Law Firm of Dannis Woliver Kelley for the Consideration and Potential Calling for a Bond Election

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

For the last general obligation bond, the District relied on the firm of Dannis Woliver Kelley for legal advice. The advice from counsel was both timely and accurate. The Board is now considering pursuing another general obligation bond and will need the advice of legal counsel. The attached contract is for that advice.

REPORT/PROPOSAL:

This is an opportunity for the Board to review and approve the proposed Agreement for Professional Services as presented.

FINANCIAL IMPACT:

The fiscal impact to the general fund for the 2017-2018 school year is unknown at this time.

RECOMMENDATION:

Approve proposed agreement for Professional Services with the law firm of Dannis Woliver Kelley for the consideration and potential calling for a bond election.

AGREEMENT FOR PROFESSIONAL SERVICES

CABRILLO UNIFIED SCHOOL DISTRICT

This Agreement is made and entered into on October _____, 2017 by and between Cabrillo Unified School District, hereinafter referred to as "District," and Dannis Woliver Kelley, a professional corporation, hereinafter referred to as "Attorney."

WHEREAS, District desires to retain Attorney to provide legal services associated with considering and calling a bond election in 2018 and the issuance and sale of general obligation bonds thereafter.

In consideration of the promises and the mutual agreements hereinafter contained, District and Attorney agree as follows:

A. SCOPE OF WORK AND PAYMENT

District appoints Attorney to represent, advise, and counsel it from October ___, 2018, and continuing thereafter in connection with the District's potential 2018 general obligation bond election and bond issuance ("Bond Services") as more specifically described in ***Attachment A*** hereto, and incorporated herein by reference. Attorney may represent District in other legal matters and provide other services as desired pursuant to a separate Professional Services Agreement. Bond Services shall be compensated in the manner described in ***Attachment A***.

The performance of Bond Services rendered prior to the date of this Agreement is hereby ratified and approved.

B. TERM AND TERMINATION

1. Term. The term of this Agreement shall commence as of its date of execution and shall expire on the earlier of: the final sale of bonds ("Bonds") from the 2018 authorization or five years after commencement of the Agreement. If at the time of expiration there remains additional general obligation bond issuance authority, this Agreement may be renewed for additional terms, subject to District's termination rights described below.

2. Termination or Abandonment of Financing. If for any reason the bond election or a Bond issuance is permanently abandoned or terminated prior to the issuance of the Bonds, then District shall compensate DWK for services performed up to the date of the abandonment or termination of the proposed financing at the rate of $310 per hour for attorneys and $120 per hour for paralegals, plus DWK's out-of-pocket expenses.

3. Termination of Attorney. District may terminate DWK without cause upon 30 days' written notice to Attorney; provided, however, that if District terminates these services after Attorney has rendered Bond Services, then District shall pay Attorney for services rendered, at the rate of $310 per hour for attorneys and $125 per hour for paralegals, plus DWK's out-of-pocket expenses.

C. OTHER PROVISIONS

1. Malpractice Coverage. Attorney agrees to prepare periodic reviews of relevant court decisions, legislation, and other legal issues. Attorney agrees to keep current and in force at all times a policy covering incidents of legal malpractice.

2. Performance of Obligations. District shall be truthful with Attorney, cooperate with Attorney, keep Attorney informed of developments, perform the obligations it has agreed to perform under this Agreement.

3. Food/Meals. Occasionally Attorney may provide District officials and/or employees with working lunches or meals when working with District officials and/or employees. Attorney may provide such food or meals without additional charge in exchange for the consideration provided by the District under this Agreement.

4. Independent Contractor. It is expressly understood and agreed to by both parties that Attorney, while carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the District.

5. Use of Subconsultants/SubContractors. Attorney uses the services of legal sub-consultants and independent contractors from time to time on finance transactions, including federal taxation specialists, which costs are paid in full by Attorney without additional expense to District. District consents to the use of such sub-consultants or independent contractors at Attorney's discretion.

6. Conflicts of Interest. Because Attorney represents many school and community college districts, county offices of education, joint powers authorities, SELPAs, other educational entities, and bond underwriters (including Raymond James) on unrelated transactions on an occasional basis, conflicts of interest may arise in the course of Attorney's representation. Attorney hereby notifies the District of this representation. If Attorney becomes aware of any potential or actual conflicts of interest, Attorney will inform the District of the conflict and comply with the legal and ethical requirements to fulfill its duties of loyalty and confidentiality to District. If District has any question about whether Attorney has a conflict of interest in its representation of District in any matter, it may contact Attorney or other legal counsel for clarification.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement for Professional Services.

CABRILLO UNIFIED SCHOOL DISTRICT

_____ _____

Jane Yuster
Superintendent

Date

DANNIS WOLIVER KELLEY

_____ 10-12-17

Janet L. Mueller
Attorney at Law

Date

ATTACHMENT "A" – SCOPE OF WORK AND FEES

CABRILLO UNIFIED SCHOOL DISTRICT

I. SCOPE OF WORK

Attorney shall provide the following Bond Services to District with regard to a 2018 general obligation bond election.

A. Pre-Election Services

Pre-Election Services shall begin upon engagement of Attorney and shall be concluded at such time as the District certifies its official vote canvass. Pre-Election Services provided by Attorney shall include the following:

- Assistance with voter polling and election planning and research in advance of calling an election;
- Preparation of a timetable setting forth the actions required to accomplish the election, and coordination with the County election officials to ensure that the necessary legal requirements are satisfied;
- Coordination with finance team and preparation of Governing Board resolutions required to call the election, including assistance with the drafting of the ballot proposition and ancillary materials;
- Attend all meetings of the District, as well as any administrative meetings at which the election and financing proceedings are to be discussed, when requested to attend or when attendance is deemed necessary for the proper planning or conduct of the financing proceedings
- Assistance with the preparation of the tax rate statement and the County Counsel's independent analysis required for distribution to voters;
- Review of the ballot arguments to be prepared by or on behalf of the District;
- Consultation with the District and its staff, the County and its staff, and the District's financial consultant(s) concerning the election proceedings and campaign law requirements, including review of all District communications, and planned activities, for compliance with legal requirements;
- Preparation of the notices, affidavits and certificates required by law for conducting the election.

B. Bond Issuance Services

Bond Issuance Services shall commence after, and only in the event of, a successful bond election. Bond Issuance Services have two service components: Bond Counsel Services and Disclosure Counsel Services.

1. Bond Counsel Services. Services to issue bonds ("Bonds") after a successful election ("Bond Counsel Services") will include the following:

    - Advice regarding the initial formation and creation of a Bond Oversight Committee and assistance in establishing policies to manage the committee, including providing sample policies, bylaws and forms for consideration;

- Consultation with the District and its staff, the County, and the District's financial advisor concerning the Bonds and the timing, terms and structure of the offering;
- Preparation of the proceedings to authorize the Bonds, including the resolution of the District Governing Board requesting that the County Board of Supervisors issue the Bonds in the name of the District (if necessary); the resolution of the County Board of Supervisors setting forth the terms and conditions of the bonds and their form, date, denominations and maturity (if necessary); and preparation of the proceedings for the sale of the bonds by competitive or negotiated sale;
- Attendance at up to two (2) in-person meetings of the District Governing Board and with the District's financial advisor and other consultants regarding the issuance and sale of the Bonds, as needed or requested; Coordination of the full finance team as necessary for the review of documents and finance plans;
- Examination of the proofs of the Bonds, preparation of the final closing papers, organization and conduct of the Bond closing, and the rendering of a final legal opinion at the time of delivery of and receipt of payment for the bonds; Review of post-closing legal compliance requirements with the District.

2. Disclosure Counsel Services. Services to assure compliance of the Bonds with federal securities laws ("Disclosure Counsel Services") will include the following:

- Preparation of the Preliminary Official Statement, the final Official Statement, and continuing disclosure certificate which accompanies the latter, for use in marketing and sale of the bonds;
- Delivery of a disclosure counsel opinion at closing; and
- Review of Continuing Disclosure filing status pursuant to MSRB Rule 15c2-12.

II. FEES

A. Pre-Election Services

Fees for Pre-Election Services will be charged on an hourly basis as follows: $225 per hour for Associates; $265 per hour for Special Counsel and Of Counsel attorneys, and $310 per hour for Shareholder attorneys. The hourly rate for paralegals, if needed, will be $125.00 per hour. Fees shall be due and owing regardless of the outcome of the bond election. Fees for Pre-Election Services may not be paid from bond proceeds.

District further agrees to reimburse Attorney for actual and necessary expenses ("Expenses") and costs with respect to providing the above services, including travel costs, support services such as copying costs, express postage, and facsimile transmittals. District agrees that such actual and necessary expenses may vary according to special circumstances necessitated by request of District or emergency conditions which occasionally arise.

Substantive communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of one-tenth (.1) of an hour, except for the first such advice in any business day, which is charged in a minimum of three-tenths (.3) of an hour. In the course of travel it may be necessary for Attorney to work for and bill other clients while in transit.

Attorney shall send District a statement for fees and costs incurred every calendar month during the period of time in which Pre-Election Services are provided. Attorney's statements shall clearly state the basis thereof, including the amount, rate and basis for calculations or other methods of determination of Attorney's fees. District shall pay Attorney's statements within thirty (30) days after each statement's date. Upon District office's request for additional statement information, Attorney shall provide a bill to District no later than ten (10) days following the request. District is entitled to make subsequent requests for bills at intervals of no less than thirty (30) days following the initial request.

B. Bond Counsel Services

For each separate series of bonds issued during the term of this Agreement, Bond Counsel Services shall be compensated a set fee of $40,000.00 per transaction, plus reimbursement of actual out-of-pocket expenses. Fees shall not be due and owing unless and until Bonds are issued, and shall be paid or reimbursed from Bond proceeds.

C. Disclosure Counsel Services

For each separate series of Bonds issued during the term of this Agreement, Disclosure Counsel Services shall be compensated a set fee of $15,000.00 per transaction, plus reimbursement of actual out-of-pocket expenses. Fees shall not be due and owing unless and until Bonds are issued, and shall be paid or reimbursed from Bond Proceeds.

III. EXCLUDED SERVICES

The following additional services are excluded from the Scope of Work and are subject to the payment provisions on an hourly basis or as otherwise agreed by the Parties in writing. These include:

- Questions related to bonds outstanding prior to the date of Attorney's engagement by the District;
- Post-closing legal advice requiring significant legal research;
- Capital project planning, implementation, construction, and litigation;
- Applications for Private Letter Rulings from the IRS;
- Negotiation of investment contracts;
- In-person participation in Finance Team or Governing Board meetings exceeding two during a transaction;
- In-person participation in rating agency meetings or bond insurance agencies outside California
- Ongoing legal advice concerning a bond oversight committee or attendance at meetings thereof.

In no event will Attorney provide campaign-related legal services to the District or any campaign committee formed to support a bond measure campaign of the District under this Agreement or any other Agreement.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.l

BOARD AGENDA ITEM: Approve and Adopt Minutes of October 12, 2017 Regular Governing Board Meeting

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

The Governing Board routinely reviews and approves minutes from all regular meetings and special sessions.

REPORT/PROPOSAL:

The unadopted minutes from the October 12, 2017, regular Governing Board meeting are included in this Board packet for consideration.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve and adopt minutes of October 12, 2017, regular Governing Board meeting.

Regular Governing Board Meeting Minutes (Unadopted)
CABRILLO UNIFIED SCHOOL DISTRICT
District Office Board Room
498 Kelly Avenue, Half Moon Bay, CA 94109
October 12, 2017
7:00 PM (Closed Session 6:00 PM)

Board Members Present:	Ms. Freya McCamant, President Mr. Rob Pappalardo, Vice President Ms. Sophia Layne, Clerk to the Governing Board Ms. Kimberly Hines, Member Dr. Kirk Riemer, Ph.D., Member
Administrators at the Table:	Ms. Jane Yuster, Superintendent Ms. Joy Dardenelle, Assistant Superintendent Ms. Crystal Leach, Chief Business Official
Student Representative:	Mr. Cesar Sarabia, Student Board Representative

1. **CALL TO ORDER - 6:00 P.M.**

2. **ROLL CALL / QUORUM**

____ Ms. Freya McCamant, President
____ Mr. Rob Pappalardo, Vice President
____ Ms. Sophia Layne, Clerk to the Governing Board
____ Ms. Kimberly Hines, Member
____ Dr. Kirk Riemer, Ph.D., Member

3. **COMMENTS FROM THE PUBLIC RELATED TO ITEMS ON THE CLOSED SESSION AGENDA**

None

4. **RECESS TO CLOSED SESSION – 6:01 P.M.**

5. **RECONVENE OPEN SESSION – 7:01 P.M.**

The Governing Board met in closed session from 6:01 p.m. to 6:57 p.m. President McCamant reported the following action taken:

1. Under Students Matters, the Governing Board voted 5-0 to expel a student from Half Moon Bay High School for the Fall 2017 and Spring 2018 semesters, with the Spring 2018 semester expulsion suspended.

   The student will be eligible for admission to Half Moon Bay High School for the Spring 2018 semester contingent on adherence to school rules, the rehabilitation plan and a behavior contract.

6. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Mr. Rajan Bechar, Principal, Pilarcitos High School.

7. ADOPTION OF AGENDA AS PRESENTED / AMENDED

Motion to adopt the agenda as presented was made by Member Rob Pappalardo and seconded by Member Kirk Riemer.

(M-19) Passed 5-0 with Student Representative voting aye

8. STUDENT / STAFF / COMMUNITY RECOGNITION

The Governing Board recognized Ms. Kate Shea. Ms. Shea is a Kings Mountain School parent of seven years. Each year Ms. Shea organizes parents and community members to bake some 4,000 cookies at Wedemeyer Bakery in South San Francisco to sell at the Kings Mountain Art Fair as our big annual fundraiser. This monumental task is one of our greatest community builders, with past and present Kings Mountain School families and local Kings Mountain community members baking together. Ms. Shea never hesitates to step in to provide support when needed. Thank you Kate!

The Governing Board recognized Ms. Julie Pedersen. Ms. Pedersen is a big hearted Kings Mountain School parent of six years. Ms. Pedersen started as a classroom volunteer who continues to offer support, spending more and more time helping out at school as an Art-In-Action parent volunteer for her son's classes, fundraising events, K/1 parent helper, office support, and it was clear she needed to join the staff. Julie became our noon duty supervisor. Still offering more help, Julie began subbing for our after school program. This year Julie is one of our classroom aides, and continues doing noon yard duty, Art-In-Action, fundraising, subbing when needed, and a classroom parent helper extraordinaire. Thank you Julie!

9. COMMENTS FROM THE PUBLIC RELATED TO ITEMS NOT ON THIS AGENDA

None

10. REPRESENTATIVE REPORTS

CUTA President Sean Riordan said with the new school year came many changes, new buildings, new bell schedules and new teachers and administrators. Everyone loves the new block schedule. There is concern for the new administrators and we are asking who is supporting them.

The administrators have a very tough job, working very long hours, and they need support and the human connection to provide feedback.

11. REPORTS / INFORMATION / PRESENTATIONS

a. Receive Report on Kings Mountain Elementary School

Ms. Diane Siegel, Principal, Kings Mountain Elementary School presented a report regarding her site, including a summary of programs, and teacher and student classroom activities.

b. Receive Report on the Single Plans for Student Achievement for all School Sites

Superintendent, Jane Yuster, prior to the report pointed out to the Governing Board several corrections make to the Site Plans after the posting of the Board Packet.

Ms. Irene Preciado, Director of Categorical Programs, presented the introduction of this report followed by each site principal who gave a brief report from their respective site plans.

12. DISCUSSION ITEMS

a. Hold Public Hearing and Discuss First Reading for the Petition of Naming a Farallone View Elementary School Garden, "The Raye Furst Garden"

President McCamant opened the public hearing at 8:15 p.m. Mr. John Nazar, Principal, Half Moon High School, spoke in favor of naming this garden "The Raye Furst Garden", having known Ms. Furst personally. Hearing no other comments, the public hearing was closed at 8:16 p.m.

13. COMMUNICATIONS

Board Members

Member Kirk Riemer said it is nice to see the changes on the Hatch campus, with the roll out of the portables being move off site. He said slowly but surely the campus is changing again. Dr. Riemer said that this country has gone through many changes and unplanned events, it is important to keep all of those people dealing with tragedy in our thoughts. He said it is overwhelming to see how things can change overnight. He said we all need to remember that it could happen to our area as well, and we are so fortunate to have avoided it so far. Dr. Riemer said it is always great to be prepared.

Member Sophia Layne said her mind is with Dr. Riemer, in thinking of all of the natural disasters that is weighing heavily on her mind. Ms. Layne said it is something that is impacting our families, and is very important to recognize trauma that could be happening within our own families. Ms. Layne said she has been busy, she met with Ms. Preciado to understand her job and the many things she is responsible for.

Ms. Layne said she also attended the Cunha Health and Wellness meeting, the San Mateo County Big Lift meeting and the San Mateo County Career Technical Meeting.

Member Kimberly Hines said she noticed in the personnel report that one of the new subs for the district was a graduate of Half Moon Bay High School in 2012. She said it warmed her heart to see that this sub has come back to work for the district. Ms. Hines thanked all of the Principals and Ms. Preciado for their heavy lifting in working with the SPSA plans. She said that the principals have done a phenomenal job.

President McCamant thanked Diane Siegel, Principal of Kings Mountain Elementary School for her beautiful presentation. She said she is looking forward to all of the site reports as it is an opportunity to educate the Board and the larger community as to what happens at each school. Ms. McCamant thanked Ms. Irene Preciado, Director of Categorical Programs, and the Principals and School Site Councils for their work on the SPSAs. Ms. McCamant said she wanted to give the new Principals a heads up since she will begin her school site visits soon. Reminding all that she likes to visit each school site at least twice a year. Ms. McCamant said she wanted to reiterate it truly is a difficult time for many in the world and asked for a moment of silence for all those who have suffered and continue to suffer in the aftermath of all of the recent natural disasters.

Student Board Member

The Student Board Representative, Mr. Cesar Sarabia gave the following report:

Hatch Elementary School:
Hatch School is having their annual Pumpkin Festival Parking lot fundraiser held by the Parent Teacher Organization (PTO). The Spanish Immersion Parent Association (SIPA) garage sale fundraiser will be held the week after. Also Hatch will soon have their annual Jog-A-Thon fundraiser.

Cunha Intermediate School:
On October 5th Cunha School had their kickball tournament between all grades, which was great fun! On the day of this report, October 12th, Cunha held a Volleyball game between the 8th graders vs the Staff. On October 13th, the Friday lunch time activity will be musical chair, a game that always makes people smile. Cunha's Capture the Flag games will begin on October 17th and will end on November 9th. The annual Halloween dance is October 20 which always brings much joy to all students. Lastly Cunha will be holding a winter coat drive, dates to be announced soon.

Pilarcitos High School:
Pilarcitos High School is enjoying a great start to our school year. The veggie boxes from our organic farm program, Coyote Farms, are in high demand. Pilarcitos has reached out to customers at other Cabrillo sites and had a great response. The Pilarcitos leadership group,

Coyote Council, is in the process of creating a few events to further strengthen our school climate. Students will compete in a tapestry making contest, a Halloween room decorating contest, and possibly even a Halloween scavenger hunt. Additionally, the schools' Songwriting class is in the middle of writing what's soon to be a #1 hit. The chorus is catchy, as it can be heard around the halls from teachers and students. As soon as it is ready for release, they will let the district know.

Half Moon Bay High School:
Half Moon Bay High School has been doing a great job with spreading positivity and spirit. On September 22 they had the yearly Club Jam which gives students the opportunity to join interesting clubs, for example Puente Club, GSA Club, Photography Club, and many more! This year our Club Jam reached up to 22 clubs, which is insane! For the month of October, there was no school on the 6th and 9th but on the Saturday in between, the High School held the annual Artichoke run. An interesting fact is this annual event was started in 1971. Lastly everyone at the High School is working very hard to bring our school positivity to the Pumpkin Festival. Immediately following the Pumpkin Festival, the focus will be on Homecoming week, October 16-20.

Superintendent
Superintendent Jane Yuster said our thoughts are with our brethren in the north. Ms. Yuster said we have contacted the former Superintendent of this district and currently the Superintendent of Rincon Valley School District. She said she has offered any and all services that Cabrillo Unified can bring to help in support of his school district. In these stressful times the focus has doubled for our students and their needs beyond the academic. The social emotional well-being of each student, we consider, it to be every bit as important as the academic well-being and will support every child.

14. **CONSENT ITEMS**

a. Approve for Distribution/Disposal of Obsolete Textbooks for Spanish and World Geography Various Grades

b. Approve Certificated Personnel Report

c. Approve Classified Personnel Report

d. Approve the Alliant International University Student Teacher and Teacher Intern Agreement from August 1, 2017 to July 31, 2022

e. Accept Donations to Cabrillo Unified School District

f. Accept Enrollment Report for the First Month of the 2017-2018 School Year

g. Approve Declaration of District Property as Obsolete

h. Approve Quarterly Report on Williams Uniform Complaints (Education Code §35186)

i. Approve and Adopt Minutes of September 14, 2017 Regular Governing Board Meeting

Motion to approve the consent items agenda as presented was made by Member Kirk Riemer and seconded by Member Kimberly Hines.

(M-20) Passed 5-0 with Student Representative voting aye

15. **ACTION ITEMS**

a. Hold Public Hearing and Adopt Resolution No. 24-17 to Approve the Statement of Assurances for the Pupil Textbook and Instruction Incentive Program for the 2017-2018 School Year

Motion to adopt Resolution No. 24-17 to approve the Statement of Assurances for the Pupil Textbook and Instruction Incentive Program for the 2017-2018 school year was made by Member Sophia Layne and seconded by Member Rob Pappalardo.

President McCamant open the public hearing regarding the adoption of Resolution No. 24-17 to approve the statement of assurances for the Pupil Textbook and Instruction Incentive Program at 8:31 p.m. Hearing no comments, the public hearing was closed at 8:32 p.m.

(M-21) Passed 5-0 with Student Representative voting aye
Roll Call:
Ms. Freya McCamant, President - aye
Mr. Rob Pappalardo, Vice President - aye
Ms. Sophia Layne, Clerk to the Governing Board - aye
Ms. Kimberly Hines, Member - aye
Dr. Kirk Riemer, Ph.D., Member - aye

b. Approve Single Plan for Student Achievement for all School Sites

Motion to approve the Single Plan for Student Achievement for all school sites as amended was made by Member Kimberly Hines and seconded by Member Sophia Layne.

(M-22) Passed 5-0 with Student Representative voting aye

c. Approve Cabrillo Unified School District Governing Board Policy Updates and Adopt the Proposed Revisions as Recommended by the California School Boards Association

Motion to approve Board Policy Updates and adopt the proposed revisions for, BP 0520.2, BP 0520.3, BP 3260, BP 3513.3, BP 5131.62, BP 6161.62, BP 6161.1, and BP 7212, as recommended by the California School Boards Association was made by Member Kirk Riemer and seconded by Member Rob Pappalardo.

(M-23) Passed 5-0 with Student Representative voting aye

16. **RETURN TO CLOSED SESSION (IF NECESSARY)**

President McCamant adjourned open session at 8:45 p.m. and the Governing Board returned to closed session at 8:50 p.m.

No action was taken.

17. **ADJOURNMENT OF THE MEETING**

Motion to adjourn made by Member Rob Pappalardo and seconded by Member Kimberly Hines.

(M-24) Passed 5-0 with Student Representative voting aye

Meeting was adjourned at 9:40 p.m.

Minutes prepared by Patricia Serrano, Administrative Assistant to the Superintendent

Minutes presented by Jane Yuster, Secretary to the Governing Board

Certified by:

_____ _____

Sophia Layne Date
Clerk to the Governing Board

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☐ **ACTION**
☒ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 14.m

BOARD AGENDA ITEM: Approve and Adopt Minutes of October 28, 2017 Special Governing Board Meeting

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

The Governing Board routinely reviews and approves minutes from all regular meetings and special sessions.

REPORT/PROPOSAL:

The unadopted minutes from the October 28, 2017, special Governing Board meeting (closed work session) are included in this Board packet for consideration.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve and adopt minutes of October 28, 2017, special Governing Board meeting.

Special Governing Board Agenda

Meeting Minutes (Unadopted)

Miramar Farms
Closed Work Session
Saturday, October 28, 2017
9:00 AM

Board Members Present: Ms. Freya McCamant, President
Mr. Rob Pappalardo, Vice President
Ms. Sophia Layne, Clerk to the Governing Board
Ms. Kimberly Hines, Member
Dr. Kirk Riemer, Ph.D., Member

Administrators at the Table: Ms. Jane Yuster, Superintendent

1. **CALL TO ORDER - 9:00 A.M.**

2. **ROLL CALL / QUORUM**

____ Ms. Freya McCamant, President
____ Mr. Rob Pappalardo, Vice President
____ Ms. Sophia Layne, Clerk to the Governing Board
____ Ms. Kimberly Hines, Member
____ Dr. Kirk Riemer, Ph.D., Member

3. **PLEDGE OF ALLEGIANCE**

Pledge of allegiance was led by Dr. Kirk Riemer.

4. **ADOPTION OF AGENDA AS PRESENTED / AMENDED**

Motion to adopted the agenda as presented was made by Member Kirk Riemer and seconded by Member Sophia Layne.

(M-25) Passed 5-0

5. **COMMENTS FROM THE PUBLIC RELATED TO ITEMS NOT ON THIS AGENDA**

None

6. **RECESS TO CLOSED SESSION – 9:07 A.M.**

No action taken.

7. **ADJOURNMENT OF THE MEETING**

Motion to adjourn made by Member Kirk Riemer and seconded by Member Rob Pappalardo.

(M-26) Passed 5-0

Meeting adjourned at 1:30 p.m.

Minutes prepared by Patricia Serrano, Administrative Assistant to the Superintendent

Minutes presented by Jane Yuster, Secretary to the Governing Board

Certified by:

_____ _____

Sophia Layne Date
Clerk to the Governing Board

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☒ **ACTION**
☐ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 15.a

BOARD AGENDA ITEM: Approve Request of Naming a Farallone View Elementary School Garden, "The Raye Furst Garden"

DEPARTMENT: Superintendent

CONTACT PERSON: Jane Yuster, Superintendent
César Gaytán, Principal, Farallone View Elementary

BACKGROUND INFORMATION:

Ms. Raye Furst was a K-5th grade teacher at Farallone View Elementary School from 1998 to 2008. She always performed beyond and above expectations and had a profound love for teaching, learning, and supporting her students. She organized colonial times hands-on educational activities and had a passion for teaching young people about the life cycle of salmon.

When Ms. Furst passed, our HEAL Team and some volunteers helped to build a native plants garden where children now explore and learn about pollination. Our school assembled a committee that met on Sep. 27th, 2017 and formally voted to request permission from Governing Board to name our garden, "The Raye Furst Garden," and install a plaque with an alevin figure that will bear witness to her memory, dedication, and just as salmon do, return her love for teaching, learning, and dedication to the place that Raye called home.

REPORT/PROPOSAL:

Officially naming our Farallone View native plants garden, located in between the primary playground and the Children's Coastside Program pathway, "The Raye Furst Garden" and installation of a donated metal plaque by the Furst Family.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve request of naming a Farallone View Elementary School Garden, “The Raye Furst Garden”.

September 28th, 2017

Dear Superintendent Yuster,

Farallone View has assembled a committee that is composed of students, parents, community members, and school employees to petition the naming of our native plants school garden, “The Raye Furst Garden” as a permanent reminder of Raye’s love and dedication to our school community. In compliance with the Cabrillo Unified School District Governing Board policy for naming of facilities, we held our meeting on Sep. 27th and approved by unanimity to formalize our request.

Our native plants garden is located in between the primary playground and the walkway to Coastside Children’s Program. It covers an approximate area of 3 yards in width and 15 yards in length. If you and the Board approved our petition, we would like to request permission to install a metallic plaque facing the west end of the garden.

For further details, please see the attached meeting notes and pictures.

Sincerely,

César Gaytán
Principal
Farallone View Elementary

Farallone View Raye Furst Naming Committee Meeting
September 27,2017
3:30 - 4:30 pm
Montara, CA

Agenda

1. Introductions: Annie Blair and Cecilia Mello (community members), Linda Herbert and Margaret Rothenberg, César Gaytán (teachers & principal), Manu Hipkins and Laurel Bigelow (parents), Andreas Hipkins, Wesley and Everett Medlin (students).

2. Purpose of the meeting: We would like to petition the Cabrillo USD Board the naming of our native plant garden "The Raye Furst Garden," in memory of her love and dedication to the Farallone View community, along with permission to put a plaque with her name.

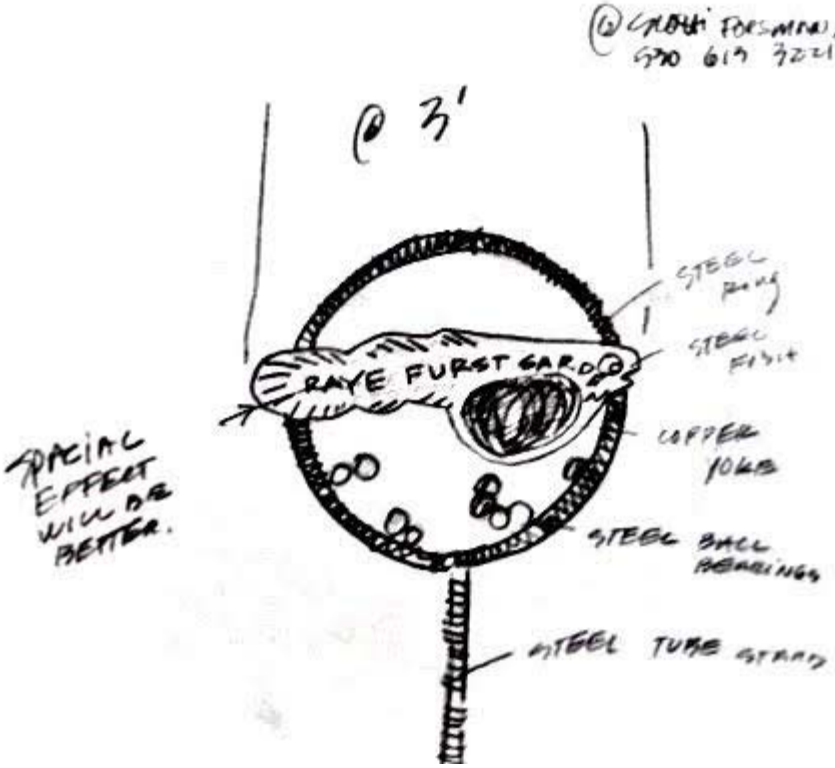
3. Justification for the naming of our garden: Raye taught as a substitute teacher at Farallone View in 1988 and later became a Pre-K, 5th grade, conducted CELDT testing, and also served as a summer teacher. She was able to get people together and bring so much joy to the meetings. Furthermore, she always came in at 7 am and felt very strongly about greeting her students at the door. Some students recall her telling lots of stories and making them feel very safe in her classroom. Because she had lots of people skills, she was able to handle student regardless of their grade level. Raye was a mentor to her 5th grade fellow teachers, Mr. Eric Denault and Ms. Kathy Rippberger. She had boundless energy and as a proud teacher, she could use her voice to get the immediate attention of her students and make them feel cared for and important when she helped them one-on-one. She had a passion for alevins and taught lessons on the life cycle of salmon. Raye put together colonial day events with up to 100 attendees that included, costumes, colonial crafts, culture, and artifacts. She later became highly involved with theatrical works at the school. Additionally, she organized a great number of field trips and always considered Farallone View her extended family. She retired in 2008 but she continued to be engaged with Farallone View until she passed. Above all, Raye always performed beyond the call of her duties. Raye's husband, Allen, Ian and Eric , their children, physically build the garden with the help of Laurel Bigelow and Michael Medlin. Much worthy of mentioning is that our children enjoy learning about pollinators while they spend time at the garden and love finding critters during recess.

4. Petitioning to Cabrillo USD: On behalf of the FV community, we would like to petition for the naming of our native plants garden, “The Raye Furst Garden.”

5. Voting: Motion, Manu Hipkins, second, Cecilia Mello. In favor, Bigelow, Gaytan, Rothenberg, Mello, Blair, Herbert, Hipkins M, Hipkins A. None opposed, no additional comments.

6. Adjourn: 4:30 pm




@ 3'
STEEL
STEEL
RAYE FURST GARDEN
COPPER
STEEL BALL
STEEL TUBE
SPACIAL
EFFECT
WILL BE
BETTER.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☒ **ACTION**
☐ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 15.b

BOARD AGENDA ITEM: Ratify Lease-Lease Back Agreement with Blach Construction

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND INFORMATION:

On June 5, 2012, the Coastside community approved Measure S authorizing the district to issue $81 million in bonds to fund a building program. On October 13, 2016 the Governing Board approved the lease-leaseback project delivery method as authorized by Education Code Section 17406. Under amended Education Code Section 17406, school districts may now enter into Lease-Leaseback agreements before they have project plans approved by the Division of the State Architect ("DSA"). This allows for Lease-Leaseback Developers to have earlier input on design, but it is not possible to calculate the total Guaranteed Maximum Price ("GMP") at the time the Lease-Leaseback agreements are entered into. The amended Education Code acknowledges this and provides that the GMP will be finalized after the project is approved by the DSA, and that the final price must be approved by the school district.

REPORT/PROPOSAL:

The district is negotiating with Blach Construction to develop a lease-lease back agreement to construct the repair of Cunha C Building. For the reason listed above, the Lease-Leaseback agreements for the Cunha Building C Project are submitted to the Board without a GMP. Pursuant to Education Code Section 14706, the GMP will be finalized after the plans are approved by the DSA. District staff will then submit an amendment to the Facilities Lease for Board approval.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Ratify Lease-Lease Back Agreement with Blach Construction.

SITE LEASE

For all or a portion of the following Site:

Cunha Building C Project
600 Church Street
Half Moon Bay, CA 94019

APN: 056-182-040, 056-182-050

By and between

Cabrillo Unified School District
498 Kelly Avenue
Half Moon Bay, CA 94019

And

Blach Construction Company
2244 Blach Place, Suite 100
San Jose, CA 95131

Dated as of September 14, 2017

SITE LEASE

This site lease ("Site Lease") dated as of September 14, 2017 ("Effective Date"), is made and entered into by and between the Cabrillo Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and Blach Construction Company, a California corporation duly organized and existing under the laws of the State, as lessee ("Developer") (together, the "Parties").

RECITALS

WHEREAS, the District currently owns a parcel of land located at 600 Church Street, Half Moon Bay, CA, known as Cunha Intermediate School, as more particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by this reference ("School Site"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the School Site ("Project Site") and that work will include construction of improvements to be known as the Cunha Building C Project ("Project"); and

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

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

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

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

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

WHEREAS, based on the above findings, the District is authorized under Education Code section 17406 to lease the Project Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project Site back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing; and

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

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

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

1. Definitions

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

2. Exhibits

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

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

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

3. Lease of the Project Site

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

4. Leaseback of the Project Site

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

5. Term

The "Term" of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Developer, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.

6. Payment

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

7. Termination

7.1. Termination Upon Purchase of Project

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

7.2. Termination Due to Default by Developer

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

7.3. Termination Due to Default by District

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

7.3.1. Take possession of the Project Site;

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

7.3.3. Re-let the Project Site; and

7.3.4. Stop all Work associated with the Site Lease.

8. Title to School Site

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

9. Improvements

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

10. No Merger

The leaseback of the Project Site by the Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Developer shall continue to have a leasehold estate in the Project Site pursuant to this Site Lease throughout the term hereof.

11. Right of Entry

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

12. Quiet Enjoyment

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

13. Waste

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

14. Further Assurances and Corrective Instruments

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

15. Representations of the District

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

15.1. Due Organization and Existence

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

15.2. Authorization

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

15.3. No Violations

To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the

creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances.

15.4. CEQA Compliance

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

15.5. Condemnation Proceedings

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

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

15.6. Use and Zoning

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

15.7. Taxes

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

16. Representations of the Developer

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

16.1. Due Organization and Existence

The Developer is a California company duly organized and existing under the laws of the State of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property; and has duly authorized the execution and delivery of all of the aforesaid agreements.

16.2. Authorization

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

16.3. No Violations

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

16.4. No Bankruptcy

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

16.5. No Litigation

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

17. Insurance and Indemnity

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

18. Assignment and Subleasing

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

19. Restrictions on District

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

20. Liens and Further Encumbrances

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

21. Notices

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

If to District:

Cabrillo Unified School District
498 Kelly Avenue
Half Moon Bay, CA 94019
Attn: Superintendent

With a copy to:

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

If to Developer:

Blach Construction Company
2244 Blach Place, Suite 100
San Jose, CA 95131
Attn: Keith Craw

With a copy to:

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

22. Binding Effect

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

23. No Additional Waiver Implied by One Waiver

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

24. Severability

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

25. Amendments, Changes and Modifications

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

26. Obligations Absolute

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

27. Execution in Counterparts

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

28. Developer and District Representatives

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

29. Applicable Law

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

30. Attorney's Fees

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

31. Captions

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

32. Prior Agreements

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

33. Further Assurances

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

34. Recitals Incorporated

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

35. Time of the Essence

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

36. Force Majeure

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

37. Interpretation

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017	Dated: _____, 2017
Cabrillo Unified School District	Blach Construction Company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Cunha Building C Project
600 Church Street
Half Moon Bay, CA 94019

The land referred to in this Report is situated in the County of San Mateo, City of Half Moon Bay, State of California, and is described as follows:

PARCEL ONE:

BEGINNING at the point of intersection of the Westerly line of Church Street (formerly Ocean Street) with the Westerly prolongation of the center line of Miramontes Street as shown on that certain map entitled "MAP OF SPANISHTOWN" filed in the office of the County Recorder of San Mateo County on January 22, 1884 in Book "A" of maps at page 53 and copied into Book 1 of Maps at page 60; thence from said point of beginning, along said Westerly line of Church Street, North 8° 00' 04" East 338.62 feet to the Southerly line of Kelly Street as shown on Record of Survey filed in the office of the County Recorder of San Mateo County on May 12, 1964 in Book 5 of Licensed Land Surveyors' Maps at page 127; thence along said Southerly line, North 81° 41' 03" West 508.75 feet; thence South 8° 00' 04" West 339220 feet to a 3/4 inch iron pipe monument set in the Westerly prolongation of the centerline of Miramontes Street; thence along said prolongation North 81° 44' 56" West 258.89 feet to the Easterly line of State Highway Route No. 56, as established by Deed to the State of California, recorded November 6, 1953 in Book 2495 of Official Records at page 701 (File No. 17686-L), Records of San Mateo County, California; thence along said Easterly line, South 7° 54' 19" West 810.29 feet to a concrete monument set on the property line common to the lands formerly of Manuel Cardoza Silva and the lands formerly of Marie Silva Dutra; thence along said common property line, North 82° 19' 09" East 795.90 feet to the Southerly prolongation of the Westerly line of Church Street; thence along said prolongation and continuing along said Westerly line of Church Street, North 8° 00' 04" East 591.81 feet to the point of beginning.

Being that certain 16.303 acre parcel of land shown on Record of Survey filed in the office of the County Recorder of San Mateo County on May 12, 1964 in Book 5 of Licensed Land Surveyors' Maps at page 127.

Excepting, however, therefrom the following described parcel:

Beginning at the Northwest corner of School House Lot, said point of beginning being on the Westerly prolongation of the Southerly line of Miramontes Street in said Spanishtown, and running thence from said point of beginning, along the Westerly prolongation of the Southerly line of said Miramontes Street, North 84° 30' West 149.50 feet; thence leaving said Southerly line, South 5° 30' West 673.97 feet to the Northerly line of a tract of land, now or formerly owned by Mrs. Hafford; thence along said Northerly line, North 79° 27' East 421.69 feet to the intersection of said Northerly line with the Southerly prolongation of the Westerly line of Ocean Street in said Spanishtown; thence along said prolongation and continuing along the Westerly line of said Ocean Street, North 5° 30' East 557.39 feet to the Southerly line of Miramontes Street; thence along said Southerly line, North 84° 30' West 255.75 feet to the point of beginning.

along said last mentioned line North 5° 05' East 35 feet; thence leaving said Easterly line of Coast Highway, South 84° 30' 00" East 258.17 feet; thence North 5° 05' East 35 feet; thence South 84° 30' 00" East 510.75 feet to said Westerly line of Church Street; thence along said last mentioned line, South 5° 05' West 70 feet to the point of beginning.

A.P.N. 056-182-050 PTN J.P.N. 56-18-182-5 PTN

PARCEL TWO:

Commencing at a point on the Southwest corner Ocean and Miramontez Streets thence along the South side of Miramontez Street running West three chains, eighty seven and a half links, thence South at right angles five chains sixty and links, thence East at right angles along the North side of Correas Street three chains, eighty seven and a half links, thence North at right angles running along the West side of Ocean Street five chains, sixty one links to the point of beginning, conveying all of block twenty-seven (27) on Ryan Addition to Spanishtown being formerly a portion of the Miramontez Rancho and surveyed by A.S. Easton, the County Surveyor of San Mateo County.

A.P.N. 056-182-050-PTN J.P.N. 56-18-182-5 PTN

PARCEL THREE:

Beginning at the Northwest corner of School House Lot, said point of beginning being on the Westerly prolongation of the Southerly line of Miramontez Street in said Spanishtown, and running thence from said point of beginning along the Westerly prolongation of the Southerly line of said Miramontez Street North 84° 30' West 149.50 feet; thence leaving said Southerly line South 5° 30' West 673.97 feet to the Northerly line of a tract of land now or formerly owned by Mrs. Hafford; thence along said Northerly line North 79° 27' East 421.69 feet to the intersection of said Northerly line with the Southerly prolongation of the Westerly line of Ocean Street in said Spanishtown; thence along said prolongation and continuing along the Westerly line of said Ocean Street North 5° 30' East 258.13 feet to the Southerly line of said School House lot; thence along the Southerly and Westerly lines of said School House lot North 84° 30' West 255.75 feet and North 5° 30' East 299.26 feet to the point of beginning.

A.P.N. 056-182-050 PTN J.P.N. 56-18-182-5 PTN

PARCEL FOUR:

Portion of Miramontes Street, abandoned by the Board of Supervisors of the County of San Mateo on November 26, 1940, a copy of the Resolution of Abandonment having been recorded December 3, 1940 in Book 933 of Official Records at page 104 (File No. 6537-E), Records of San Mateo County, California, said portion being more particularly described as follows:

Beginning at a point on the Westerly line of Church Street, also known as Ocean Street, at the intersection thereof with the Northerly line of lands conveyed from Patrick Ryan to John Johnston by Deed dated August 1, 1866 and recorded in book 6 of Deeds at page 265, Records of San Mateo County, California; thence

EXHIBIT B

DESCRIPTION OF PROJECT SITE

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



FACILITIES LEASE

For all or a portion of the following Site:

Cunha Building C Project
600 Church Street
Half Moon Bay, CA 94019

APN: 056-182-040, 056-182-050

By and between

Cabrillo Unified School District
498 Kelly Avenue
Half Moon Bay, CA 94019

And

Blach Construction Company
2244 Blach Place, Suite 100
San Jose, CA 95131

Dated as of September 14, 2017

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FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of September 14, 2017 ("Effective Date"), is made and entered into by and between Blach Construction Company ("Developer"), a California corporation duly organized and existing under the laws of the State of California, as sublessor, and Cabrillo Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

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

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

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at 600 Church Street, Half Moon Bay, CA 94019 known as Cunha Intermediate School, particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by reference ("School Site"); and

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

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

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

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

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

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

WHEREAS, Developer has reviewed the Lease Documents; and

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

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

WHEREAS, Developer is authorized to lease the Project Site as lessee and to develop the Project and to have the Project constructed on the Project Site and to lease the Project and the Project Site back to the District, and has duly authorized the execution and delivery of this Facilities Lease.

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

1. Definitions

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

1.1 "**Developer**" or "**Lessor**" means Blach Construction Company, a California corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

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

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

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

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

1.6.1 Liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2 The Site Lease.

1.6.3 This Facilities Lease.

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

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

2. Exhibits

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

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

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

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

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

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

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

2.7 Exhibit F - Construction Schedule

2.8 Exhibit G – Schedule of Values

3. Lease of Project and Project Site

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

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

continue to have and hold a leasehold estate in the Project Site pursuant to the Site Lease throughout the Term thereof and the Term of this Facilities Lease.

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

4. Term

4.1 Facilities Lease is Legally Binding

This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The "Term" of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the earlier of the following two (2) events, whichever occurs first ("Commencement Date"):

4.1.1 The date the District takes beneficial occupancy of the Project; or

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

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

4.2 After Developer has completed construction of the Project and the District has accepted the Project, the Parties shall execute the Memorandum of Commencement Date attached hereto as **Exhibit E** to memorialize the commencement date of the Lease Payments and expiration date of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the beginning of the Lease Payment obligations.

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

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

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

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

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

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

5. Payment

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

6. Title

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

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

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

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

7. Quiet Enjoyment

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

8. Representations of the District

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

8.1 Due Organization and Existence

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

8.2 Authorization

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

8.3 No Violations

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

8.4 Condemnation Proceedings

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

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

9. Representations of the Developer

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

9.1 Due Organization and Existence

The Developer is a California company duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

9.2 Authorization

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

9.3 No Violations

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

9.4 No Bankruptcy

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

9.5 No Encumbrances

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

9.6 Continued Existence

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

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

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

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

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

10. <u>Pre-construction Services</u>

10.1 Scope of the Preconstruction Services

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

10.1.1 General Services

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

10.1.1.2 Developer shall assist the Architect with making formal presentations to the governing board of District. Such assistance is anticipated to include floor plans and elevations necessary for any architectural presentation.

10.1.1.3 Developer shall prepare a rough schedule in a format acceptable to District, and update as necessary.

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

10.1.1.5 While the Architect is anticipated to provide primary assistance, Developer shall assist District with City land use issues.

10.1.1.6 Architect shall act as lead and Developer will assist District and Architect with DSA review, input, and timeframe for same.

10.1.1.7 Architect shall act as lead and Developer will assist with review and comment upon geotechnical / soils investigation and report.

10.1.1.8 Architect shall act as lead and Developer will assist with review and comment upon survey of the Project site.

10.1.2 Review of Design Documents.

10.1.2.1 Review Project design and budget with the District and the Architect based on the Design Development Documents, 50% Construction Documents, and the 100% Construction Documents submitted to DSA to:

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

10.1.2.1.2 Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible

economics that could be achieved through alternate methods or substitutions;

10.1.2.1.3 Provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and

10.1.2.1.4 Provide plan review.

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

10.1.2.1.5.1 Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

10.1.2.1.5.2 Provides detailed estimate for proposed value-engineering items;

10.1.2.1.5.3 Defines methodology or approaches that maximize value; and

10.1.2.1.5.4 Identifies design choices that can be more economically delivered.

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

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

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

10.1.2.1.6.3 Back-checks design drawings for inclusion of modifications; and

10.1.2.1.6.4 Provides the District with written confirmation that:

10.1.2.1.6.4.1 Requirements noted in the design documents prepared for the Project are consistent with and conform to the

District's Project requirements and design standards.

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

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

10.1.3 Budget of Project Costs.

10.1.3.1 At each stage of plan review indicated above, Developer will update and refine the budget of the Guaranteed Maximum Price based on the most recent set of design documents. Developer shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Maximum Price established by the District and shall make recommendations for corrective action. Developer will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

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

10.1.3.2.1 Overhead and profit;

10.1.3.2.2 Supervision;

10.1.3.2.3 General conditions;

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

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

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

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

10.1.3.2.8 Demolition;

10.1.3.2.9 Installation;

10.1.3.2.10 Rough-in;

10.1.3.2.11 Finishes;

10.1.3.2.12 Testing;

10.1.3.2.13 Owner and Maintenance Manuals; and

10.1.3.2.14 Punchlist and acceptance.

10.1.4 Construction Schedule and Phasing Plan

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

10.1.5 Construction Planning and Bidding

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

10.1.5.2 Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.

10.1.5.3 Attend meetings at the Project site with the Architect and the design team as needed, until plans are ready for submittal to DSA.

10.1.5.4 Provide plan review and constructability services with an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget.

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

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

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

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

10.1.5.9 DSA approved plans shall be utilized to receive subcontractor bids and develop the final GMP in accordance with the lease-leaseback agreement forms, including the requirement that the Developer engage in competitive bidding for subcontractors for all scopes of work on the Project that constitute more than one half of one percent (0.5%) of the total GMP. The District representative shall be present during the receipt of bids from subcontractors.

10.1.5.10 The GMP shall be presented to the District in the following manner within a three ring binder as well as electronically on an external memory device such as a CD, USB drive, or other comparable device:

10.1.5.10.1 Cover sheet, signed by the developer indicating the GMP dollar amount with a certification, indicating that the GMP is all inclusive per the plans, specifications and addenda (contract documents). Also include certification stating, "Developer hereby certifies that they have reviewed all subcontractor proposals and whether the subcontractor excluded portions of their scope the Developer has included all costs for a complete GMP in accordance with plans, specifications and addenda."

10.1.5.10.2 A bid tabulation sheet indicating the breakdown by subcontractor/trade along with the appropriate general condition amount, other fees (as submitted with the response to the RFQ/P).

10.1.5.10.3 Behind the bid tabulation sheet mentioned in subdivision 10.1.5.5.2 above should be a sheet that indicates what is included in the general conditions, which should match what was submitted in the response to the RFQ/P.

10.1.5.10.4 Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and

subcontractors that provided bids as well as those that were asked to bid, but did not submit a proposal. This sheet should have the dollar amounts for each subcontractor that provided a bid with the first column being the proposed subcontractor for that trade.

10.1.5.10.5 Behind subdivision 10.1.5.5.4 above should be the bids for that trade with the proposed subcontractor bid on top and the other subcontractor bids in descending dollar order.

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

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

10.1.5.13 Any other services that are reasonable and necessary to control the budget and schedule. List those areas where subconsultants will be required and where the Respondent has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project.

10.2 Schedule

Preconstruction services outlined above will commence on the date the District issues a Notice to Proceed with Preconstruction Services for the Agreement, and conclude upon approval of the Amendment to the Lease Agreements by District's Board on or about _____, 20__, or termination of this Agreement by either party per the Agreement's terms. Any extension shall be subject to reasonable approval in writing by the Parties.

10.3 Ownership of Records

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

10.4 Open Book Policy

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

10.5 Compensation to Developer for Preconstruction Services

District agrees to reimburse Developer in the total amount not to exceed ninety seven thousand, eight hundred dollars ($97,800), for the performance of

services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. In the event Developer and District enter into the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

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

10.6 Termination before Construction Phase

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

10.6.2 In the event that the Parties do not reach an agreement on the GMP, this Agreement will be terminated at that time. In the event of such a termination, the District shall pay Developer no more than the not to exceed amount in Section 10.5 above.

10.7 Construction Phase

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

11. Construction of Project

11.1 Construction of Project

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

11.1.2 Contract Time / Construction Schedule

It is hereby understood and agreed that the Contract Time for this Project shall be _____ (_____) calendar days, commencing with the date upon which the Facilities Lease and the Site Lease are fully executed and delivered to both Parties and ending with completion of the Work which will occur no later than _____, 20__ ("Contract Time"). The Construction Schedule must be approved by the District.

11.1.3 Schedule of Values

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

11.1.4 Liquidated Damages

Time is of the essence for all work Developer must perform to complete the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of One Thousand, Five Hundred and One Dollars ($1,501) per day as liquidated damages for each and every day's delay beyond the Contract Time.

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

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

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

11.1.5 Guaranteed Maximum Price

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

11.1.6 Modifications

If the DSA requires changes to the Contract Documents submitted by District to Developer, and those changes change the construction costs and/or construction time for the Project, then those changed costs or time will be handled as a modification pursuant to the provisions of **Exhibit D**.

12. Maintenance

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

13. Utilities

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

14. Taxes and Other Impositions

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

15. Insurance

15.1 Developer's Insurance

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

15.1.1 Commercial General Liability and Automobile Liability Insurance

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

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

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

15.1.2 Excess Liability Insurance

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

15.1.2.2 There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Developer, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Architect(s) in amounts and including the provisions as set forth in **Exhibit D** or **Exhibit D-1** and/or the Supplementary Conditions (if any), and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

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

15.1.3 Subcontractor

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

15.1.4 Workers' Compensation and Employers' Liability Insurance

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

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

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

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

Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

15.1.6 Pollution Liability Insurance

15.1.6.1 Developer shall procure and maintain Pollution Liability Insurance that shall protect Developer, District, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Facilities Lease, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. This coverage shall be provided in a form at least as broad as Insurance Services Offices, Inc. (ISO) Form CG 2415, or Developer shall procure and maintain these coverages separately.

15.1.6.2 Developer shall warrant that any retroactive date applicable to coverage under the policy predates the Effective Date of this Facilities Lease and that continuous coverage will be maintained or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.

15.1.6.3 If Developer is responsible for removing any pollutants from a site, then Developer shall ensure that Any Auto, including owned, non-owned, and hired, are included within the above policies and at the required limits, to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

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

15.1.7.1 Developer shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Developer and its Subcontractor(s) have procured all

required insurance and Developer has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

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

15.1.7.2.1 A clause stating:

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

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

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

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

15.1.7.5 Developer's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members,

employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

15.1.7.6 All endorsements shall waive any right to subrogation against any of the named additional insureds.

15.1.7.7 All policies shall be written on an occurrence form.

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

15.1.7.9 The insurance requirements set forth herein shall in no way limit the Developer's liability arising out of or relating to the performance of the Work or related activities.

15.1.7.10 Failure of Developer and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Facilities Lease and constitute a Default by the Developer pursuant to this Facilities Lease.

15.1.8 Insurance Policy Limits

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

COMMERCIAL GENERAL LIABILITY	Combined Single Limit	$4,000,000
	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	$4,000,000
AUTOMOBILE LIABILITY – ANY AUTO	Combined Single Limit	$4,000,000
WORKERS COMPENSATION		Statutory limits pursuant to State law
EMPLOYERS' LIABILITY		$4,000,000
POLLUTION LIABILITY		$1,000,000 per claim; $2,000,000 aggregate

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

COMMERCIAL GENERAL LIABILITY	Combined Single Limit	$2,000,000
	Product Liability and Completed Operations	$2,000,000

AUTOMOBILE LIABILITY - ANY AUTO	Combined Single Limit	$2,000,000
WORKERS COMPENSATION		Statutory limits pursuant to State law
EMPLOYERS' LIABILITY		$2,000,000

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

15.2 District's Insurance

15.2.1 Rental Interruption Insurance

District shall at all times from and after District's **acceptance** of the Project, for the benefit of District and Developer, as their interests may appear, maintain rental interruption insurance to cover loss, total or partial, of the use of the Project due to damage or destruction, in an amount at least equal to the maximum estimated Lease Payments payable under this Facilities Lease during the current or any future twenty-four (24) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Developer.

15.2.2 Property Insurance

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

16. Indemnification and Defense

16.1 To the fullest extent permitted by California law, Developer shall indemnify, keep and hold harmless the District and its respective Board Members, officers,

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

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

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

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

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

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

17. Eminent Domain

17.1 Total Taking After Project Delivery

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

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

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

17.2 Total Taking Prior to Project Delivery

If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Developer is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Developer shall be the amount Developer has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

17.3 Partial Taking.

If, following delivery of possession of the Project by Developer to District, less than all of the Project and the Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain.

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

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

18. Damage and Destruction

If, following delivery of possession of all or a portion of the Project by Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the GMP provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the GMP provisions indicated in **Exhibit C** for the remainder of the original Term.

19. Abatement

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

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

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

19.3.1 Repair the Project to full use.

19.3.2 Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, and that replacement,

once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

19.3.3 Exercise the District's purchase option as indicated in the GMP provisions indicated in **Exhibit C** to this Facilities Lease.

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

20. Access

20.1 By Developer

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

20.2 By District

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

21. Assignment, Subleasing

21.1 Assignment and Subleasing by the District

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

21.1.1 This Facilities Lease and the obligation of the District to make the payments required pursuant to the GMP provisions indicated in **Exhibit C** shall remain obligations of the District; and

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

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21.2 Assignment by Developer

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

22. Termination, Default And Suspension

22.1 Termination; Lease Terminable Only As Set Forth Herein

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

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

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

quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

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

22.2 District's Right to Terminate Developer for Cause

22.2.1 Grounds for Termination

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

22.2.1.1 Developer refuses or fails to execute the Work or any separable part thereof; or

22.2.1.2 Developer fails to complete said Work within the time specified or any extension thereof; or

22.2.1.3 Developer persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with the Facilities Lease; or

22.2.1.4 Prior to completion of the Project, Developer is adjudged a bankrupt, files a petition for relief as a debtor, or a petition is filed against the Developer without its consent, and the petition not dismissed within sixty (60) days; or

22.2.1.5 Prior to the completion of the Project, Developer makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

22.2.1.6 Developer persistently or repeatedly refuses and/or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

22.2.1.7 Developer fails to make prompt payment to Subcontractors, or for material, or for labor; or

22.2.1.8 Developer persistently disregards laws, or ordinances, or instructions of District as indicated in **Exhibit D**, or otherwise in violation of **Exhibit D**; or

22.2.1.9 Developer fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work

or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

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

22.2.2 Notification of Termination

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

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

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

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

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

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

22.2.2.3 Surety shall not utilize Developer in completing the Project if the District notifies Surety of the District's objection to Developer's further participation in the completion of the Project. Surety expressly agrees that any developer which Surety proposes to fulfill Surety's obligations is subject to District's approval.

22.2.2.4 If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Developer and/or its Surety. Developer and its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Facilities Lease. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work all materials, appliances, plan, and other property belonging to Developer as may be on the Site of the Work, in bonded storage, or previously paid for.

22.2.3 Effect of Termination

22.2.3.1 If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site and any improvements built upon the Project Site shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the GMP provisions indicated in **Exhibit C**, less any damages incurred by District due to Developer's default, acts, or omissions.

22.2.3.2 The District shall retain all rights it possesses pursuant to this Facilities Lease including, without limitation.

22.2.3.2.1 The right to assess liquidated damages due because of any project delay; and

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

22.2.3.3 Developer shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any

materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Developer and its Surety shall be liable upon the performance bond for all damages caused the District by reason of the Developer's failure to complete the Work under this Facilities Lease.

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

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

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

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

22.2.3.8 All payments due the Developer hereunder shall be subject to a right of offset by the District for expenses, damages, losses, costs, claims, or reimbursements suffered by, or due to, the District as a result of any default, acts, or omissions of the Developer.

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

22.3 Termination of Developer for Convenience

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

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

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

22.4 Developer Remedies Upon District Default

22.4.1 Events of Default by District Defined

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

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

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

of time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.4.2 Remedies on District's Default

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

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

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

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

22.4.2.2 District's obligation to make the payments required pursuant to the GMP provisions indicated in **Exhibit C** shall be:

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

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

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

22.4.3 District's Continuing Obligation

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

22.4.4 No Remedy Exclusive

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

22.5 Suspension of Work

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

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

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

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

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

22.5.1.2 Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order in **Exhibit D**. This amount shall be full compensation for all Developer's and its Subcontractor(s)' changes in the cost of performance of

the Facilities Lease caused by any such suspension, delay or interruption.

23. Notices

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

If to District:

Cabrillo Unified School District
498 Kelly Avenue
Half Moon Bay, CA 94019
Attn: Superintendent

If to Developer:

Blach Construction Company
2244 Blach Place, Suite 100
San Jose, CA 95131
Attn: Keith Craw

With a copy to:

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

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

24. Binding Effect

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

25. No Additional Waiver Implied by One Waiver

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

26. Severability

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

27. Amendments, Changes and Modifications

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

28. Net-Net-Net Lease

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

29. Execution in Counterparts

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

30. Developer and District Representatives

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

31. Applicable Law

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

32. Attorney's Fees

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

33. Captions

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

34. Prior Agreements

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

35. Further Assurances

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

36. Recitals and Exhibits Incorporated

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

37. Time of the Essence

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

38. Force Majeure

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

39. Interpretation

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2017	Dated: _____, 2017
Cabrillo Unified School District	Blach Construction Company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Cunha Building C Project
600 Church Street
Half Moon Bay, CA 94019

The land referred to in this Report is situated in the County of San Mateo, City of Half Moon Bay, State of California, and is described as follows:

PARCEL ONE:

BEGINNING at the point of intersection of the Westerly line of Church Street (formerly Ocean Street) with the Westerly prolongation of the center line of Miramontes Street as shown on that certain map entitled "MAP OF SPANISHTOWN" filed in the office of the County Recorder of San Mateo County on January 22, 1884 in Book "A" of maps at page 53 and copied into Book 1 of Maps at page 60; thence from said point of beginning, along said Westerly line of Church Street, North 8° 00' 04" East 338.62 feet to the Southerly line of Kelly Street as shown on Record of Survey filed in the office of the County Recorder of San Mateo County on May 12, 1964 in Book 5 of Licensed Land Surveyors' Maps at page 127; thence along said Southerly line, North 81° 41' 03" West 508.75 feet; thence South 8° 00' 04" West 339220 feet to a 3/4 inch iron pipe monument set in the Westerly prolongation of the centerline of Miramontes Street; thence along said prolongation North 81° 44' 56" West 258.89 feet to the Easterly line of State Highway Route No. 56, as established by Deed to the State of California, recorded November 6, 1953 in Book 2495 of Official Records at page 701 (File No. 17686-L), Records of San Mateo County, California; thence along said Easterly line, South 7° 54' 19" West 810.29 feet to a concrete monument set on the property line common to the lands formerly of Manuel Cardoza Silva and the lands formerly of Marie Silva Dutra; thence along said common property line, North 82° 19' 09" East 795.90 feet to the Southerly prolongation of the Westerly line of Church Street; thence along said prolongation and continuing along said Westerly line of Church Street, North 8° 00' 04" East 591.81 feet to the point of beginning.

Being that certain 16.303 acre parcel of land shown on Record of Survey filed in the office of the County Recorder of San Mateo County on May 12, 1964 in Book 5 of Licensed Land Surveyors' Maps at page 127.

Excepting, however, therefrom the following described parcel:

Beginning at the Northwest corner of School House Lot, said point of beginning being on the Westerly prolongation of the Southerly line of Miramontes Street in said Spanishtown, and running thence from said point of beginning, along the Westerly prolongation of the Southerly line of said Miramontes Street, North 84° 30' West 149.50 feet; thence leaving said Southerly line, South 5° 30' West 673.97 feet to the Northerly line of a tract of land, now or formerly owned by Mrs. Hafford; thence along said Northerly line, North 79° 27' East 421.69 feet to the intersection of said Northerly line with the Southerly prolongation of the Westerly line of Ocean Street in said Spanishtown; thence along said prolongation and continuing along the Westerly line of said Ocean Street, North 5° 30' East 557.39 feet to the Southerly line of Miramontes Street; thence along said Southerly line, North 84° 30' West 255.75 feet to the point of beginning.

PARCEL TWO:

Commencing at a point on the Southwest corner Ocean and Miramontez Streets thence along the South side of Miramontez Street running West three chains, eighty seven and a half links, thence South at right angles five chains sixty and links, thence East at right angles along the North side of Correas Street three chains, eighty seven and a half links, thence North at right angles running along the West side of Ocean Street five chains, sixty one links to the point of beginning, conveying all of block twenty-seven (27) on Ryan Addition to Spanishtown being formerly a portion of the Miramontez Rancho and surveyed by A.S. Easton, the County Surveyor of San Mateo County.

A.P.N. 056-182-050-PTN J.P.N. 56-18-182-5 PTN

PARCEL THREE:

Beginning at the Northwest corner of School House Lot, said point of beginning being on the Westerly prolongation of the Southerly line of Miramontez Street in said Spanishtown, and running thence from said point of beginning along the Westerly prolongation of the Southerly line of said Miramontez Street North 84° 30' West 149.50 feet; thence leaving said Southerly line South 5° 30' West 673.97 feet to the Northerly line of a tract of land now or formerly owned by Mrs. Hafford; thence along said Northerly line North 79° 27' East 421.69 feet to the intersection of said Northerly line with the Southerly prolongation of the Westerly line of Ocean Street in said Spanishtown; thence along said prolongation and continuing along the Westerly line of said Ocean Street North 5° 30' East 258.13 feet to the Southerly line of said School House lot; thence along the Southerly and Westerly lines of said School House lot North 84° 30' West 255.75 feet and North 5° 30' East 299.26 feet to the point of beginning.

A.P.N. 056-182-050 PTN J.P.N. 56-18-182-5 PTN

PARCEL FOUR:

Portion of Miramontes Street, abandoned by the Board of Supervisors of the County of San Mateo on November 26, 1940, a copy of the Resolution of Abandonment having been recorded December 3, 1940 in Book 933 of Official Records at page 104 (File No. 6537-E), Records of San Mateo County, California, said portion being more particularly described as follows:

Beginning at a point on the Westerly line of Church Street, also known as Ocean Street, at the intersection thereof with the Northerly line of lands conveyed from Patrick Ryan to John Johnston by Deed dated August 1, 1866 and recorded in book 6 of Deeds at page 265, Records of San Mateo County, California; thence

along said last mentioned line North 5° 05' East 35 feet; thence leaving said Easterly line of Coast Highway, South 84° 30' 00" East 258.17 feet; thence North 5° 05' East 35 feet; thence South 84° 30' 00" East 510.75 feet to said Westerly line of Church Street; thence along said last mentioned line, South 5° 05' West 70 feet to the point of beginning.

A.P.N. 056-182-050 PTN J.P.N. 56-18-182-5 PTN

EXHIBIT B

DESCRIPTION OF PROJECT SITE

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



EXHIBIT C

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

1. Site Lease Payments

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

2. Guaranteed Maximum Price

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

2.1 Cost of the Work

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

2.1.1 General Conditions

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

2.1.2 Subcontract Costs

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

2.1.3 Developer-Performed Work

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

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

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

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

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

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

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

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

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

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

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

2.1.4 Allowances

Because it is impossible at the time of execution of the Facilities Lease to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances for the Tasks/Work as noted here in **Attachment 2** (Guaranteed Maximum Price).

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

2.1.5 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

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

2.1.6 Excluded Costs

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

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

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

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

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

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

2.1.7 Developer's Fee

The Developer's Fee shall be a flat fee in the amount of _____ ($_____) based on the scope of work identified in the Cost of Work as described in Section 2.1. For District-initiated changes to the scope of work, the Developer Fee shall be Four and One-Half percent (4.5%) of the cost of the work.

2.1.8 Bonds and Insurance

For insurance and bonds required under this Facilities Lease (exclusive of those required by Subcontractors, which costs are included in the subcontract amounts), that portion of insurance and bond premiums which are directly attributable to this Contract, which shall be calculated at a rate of One percent (1%) of the Cost of the Work for insurance and Eight-Tenths of One percent (0.8%) of the Cost of the Work for payment and performance bonds.

2.1.9 Contingency

2.1.9.1 The Guaranteed Maximum Price includes a Developer Contingency of _____ (___%) of the Cost of the Work as described in Section 2.1.1, 2.1.2, and 2.1.3 for potential additional construction costs for District requested changes, unforeseen conditions that occur over the course of construction and/or scope gaps between the subcontract categories of the Work.

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

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

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

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

Maximum Price to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

2.3 Total Payment

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

2.4 Changes to Guaranteed Maximum Price

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

2.4.2 As indicated in the Facilities Lease, the Parties may add to or remove from the project specific scopes of work. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Maximum Price. If a cost impact of a change is agreed to by the Parties, it shall be paid upon the payment request from the Developer for the work that is the subject of the change in accordance with the provisions of **Exhibit D**. The amount of any change to the Guaranteed Maximum Price shall be calculated in accordance with the provisions of **Exhibit D** to this Facilities Lease.

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

2.4.4 Cost Savings

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

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

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

3. Tenant Improvement Payments

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

4. Lease Payments

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

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

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

4.3 Fair Rental Value

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

4.4 Each Lease Payment Constitutes a Current Expense of the District

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

4.4.2 Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for

this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

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

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

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

5. District's Purchase Option

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

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

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

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ATTACHMENT 1

GENERAL CONDITIONS COSTS

ATTACHMENT 2

GUARANTEED MAXIMUM PRICE

To be attached.

ATTACHMENT 3

SCHEDULE OF LEASE PAYMENTS

Amortization Schedule

Loan Amount: $ 800,000.00

Interest: 5.00% Annual

Term in Months: 12.00

Payment Frequency: Monthly

Payment #	Total Payment	Principal Payment	Interest Payment	Balance
				$800,000.00
1	$68,485.98	$3,333.33	$65,152.65	$734,847.35
2	$68,485.98	$3,061.86	$65,424.12	$669,423.23
3	$68,485.98	$2,789.26	$65,696.72	$603,726.5
4	$68,485.98	$2,515.53	$65,970.46	$537,756.05
5	$68,485.98	$2,240.65	$66,245.34	$471,510.71
6	$68,485.98	$1,964.63	$66,521.36	$404,989.35
7	$68,485.98	$1,687.46	$66,798.53	$338,190.82
8	$68,485.98	$1,409.13	$67,076.86	$271,113.97
9	$68,485.98	$1,129.64	$67,356.34	$203,757.62
10	$68,485.98	$848.99	$67,637.00	$136,120.63
11	$68,485.98	$567.17	$67,918.82	$68,201.81
12	$68,485.98	$284.17	$68,201.81	$0.00
Totals	**$821,831.83**	**$800,000**	**$21,831.83**	

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS FOR THE FOLLOWING PROJECT:

CUNHA BUILDING C PROJECT

BY AND BETWEEN

CABRILLO UNIFIED SCHOOL DISTRICT

AND

BLACH CONSTRUCTION COMPANY

Dated as of _____, 2017

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1. Contract Terms and Definitions

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.12.1 Non-Collusion Declaration

1.1.12.2 Site Lease

1.1.12.3 Facilities Lease, including Exhibits A- G

1.1.12.3.1 Performance Bond

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

1.1.12.3.3 [RESERVED]

1.1.12.3.4 Hazardous Materials Procedures and Requirements

1.1.12.3.5 Workers' Compensation Certification

1.1.12.3.6 Prevailing Wage Certification

1.1.12.3.7 Disabled Veterans Business Enterprise Participation Certification (if applicable)

1.1.12.3.8 Drug-Free Workplace Certification

1.1.12.3.9 Tobacco-Free Environment Certification

1.1.12.3.10 Hazardous Materials Certification

1.1.12.3.11 Lead-Based Materials Certification (if applicable)

1.1.12.3.12 Imported Materials Certification (if applicable)

1.1.12.3.13 Criminal Background Investigation/Fingerprinting Certification

1.1.12.3.14 Roofing Project Certification

1.1.12.3.15 Iran Contracting Act Certification

1.1.12.3.16 Skilled and Trained Workforce Certification

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

1.1.12.3.18 Agreement and Release of Any and All Claims

1.1.12.4 All Plans, Technical Specifications, and Drawings

1.1.12.5 Any and all addenda to any of the above documents

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

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

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

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

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

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

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

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

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

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

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

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

1.1.22 DSA. Division of the State Architect.

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

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

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

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

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

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

1.1.29 Plans. See "Drawings."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.49 State. The State of California.

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

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

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

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

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

1.2 Laws Concerning the Contract Documents

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

1.3 No Oral Agreements

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

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

1.4 No Assignment

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

1.5 Notice and Service Thereof

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

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

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

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

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

1.6 No Waiver

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

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

1.7 Substitutions For Specified Items

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

1.8 Materials and Work

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

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

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

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

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

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

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

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

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

2. [Reserved]

3. Architect

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

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

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

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

4. Construction Manager

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

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

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

5. Inspector, Inspections, and Tests

5.1 Project Inspector

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

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

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

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

5.2 Tests and Inspections

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

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

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

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

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

5.3 Costs for After Hours and/or Off Site Inspections

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

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

6. Developer

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

6.1 Status of Developer

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

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

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

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

6.2 Project Inspection Card(s)

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

6.3 Developer's Supervision

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

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

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

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

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

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

6.3.5.1.1 Name of contractor

6.3.5.1.2 Name of employee

6.3.5.1.3 Contractor's address and phone number

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

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

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

6.4 Duty to Provide Fit Workers

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

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

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

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

6.5 Field Office

Developer shall provide on the Work Site a temporary office.

6.6 Purchase of Materials and Equipment

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

6.7 Documents on Work

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

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

6.7.2 Daily Job Reports

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

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

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

6.7.2.1.3 The weather conditions on that day.

6.7.2.1.4 A list of all Subcontractor(s) working on that day.

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

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

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

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

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

6.8 Preservation of Records

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

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

6.9 Integration of Work

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

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

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

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

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

6.10 Notifications

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

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

6.11 Obtaining of Permits, Licenses and Registrations

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

6.12 Royalties and Patents

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

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

6.13 Work to Comply With Applicable Laws and Regulations

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

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

6.13.1.2 National Board of Fire Underwriters' Regulations

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

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

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

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

6.13.1.7 Americans with Disabilities Act

6.13.1.8 Education Code of the State of California

6.13.1.9 Government Code of the State of California

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

6.13.1.11 Public Contract Code of the State of California

6.13.1.12 California Art Preservation Act

6.13.1.13 U. S. Copyright Act

6.13.1.14 U. S. Visual Artists Rights Act

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

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

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

6.14 Safety/Protection of Persons and Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.15.1.2.2 Construction sites where:

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

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

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

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

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

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

6.16 Working Evenings and Weekends

Developer may be required to work evenings and/or weekends at no additional cost to the District. 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 Inspector charges necessitated by the Developer's evening and/or weekend work.

6.17 Cleaning Up

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

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

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

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

7. Subcontractors

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

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

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

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

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

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

7.6.1 If the Contract is valued at $1 million or more and plans to use state bond funds, then Developer is responsible for ensuring that first-tier Subcontractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses, are prequalified by the District to work on the Project pursuant to Public Contract Code section 20111.6.

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

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

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

8. Other Contracts/Contractors

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

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

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

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

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

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

9. Drawings and Specifications

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

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

9.3 Trade Name or Trade Term

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

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

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

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

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

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

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

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

9.10 Ownership of Drawings

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

10. Developer's Submittals and Schedules

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

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

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

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

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

10.1.4 The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

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

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

10.1.6.1 Preliminary Schedule

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

10.1.6.2 Preliminary Schedule of Values

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

10.1.6.2.1 Divided into at least the following categories:

10.1.6.2.1.1 Overhead and profit

10.1.6.2.1.2 Supervision

10.1.6.2.1.3 General conditions

10.1.6.2.1.4 Layout

10.1.6.2.1.5 Mobilization

10.1.6.2.1.6 Submittals

10.1.6.2.1.7 Bonds and insurance

10.1.6.2.1.8 Close-out/Certification documentation

10.1.6.2.1.9 Demolition

10.1.6.2.1.10 Installation

10.1.6.2.1.11 Rough-in

10.1.6.2.1.12 Finishes

10.1.6.2.1.13 Testing

10.1.6.2.1.14 Punch list and acceptance

10.1.6.2.2 And also divided by each of the following areas:

10.1.6.2.2.1 Site work

10.1.6.2.2.2 By each building

10.1.6.2.2.3 By each floor

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

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

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

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

10.1.6.2.4 Closeout documentation shall have a value in the preliminary schedule of not less than 5%.

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

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

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

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

10.1.6.3 Schedule of Values

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

10.1.6.4 Preliminary Schedule of Submittals

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

10.1.6.5 Safety Plan

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

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

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

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

10.1.6.6 Complete Subcontractor List

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

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

10.2 Monthly Progress Schedule(s)

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

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

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

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

10.2.5 District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

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

10.3 Material Safety Data Sheets (MSDS)

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

11. Site Access, Conditions, And Requirements

11.1 Site Investigation

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

11.2 Soils Investigation Report

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

11.3 Access to Work

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

11.4 Layout and Field Engineering

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

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

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

11.5 Utilities

Utilities shall be provided as indicated in the Specifications.

11.6 Sanitary Facilities

Sanitary facilities shall be provided as indicated in the Specifications.

11.7 Surveys

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

11.8 Regional Notification Center

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

11.9 Existing Utility Lines

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

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

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

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

11.10 Notification

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

11.11 Hazardous Materials

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

11.12 No Signs

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

12. Trenches

12.1 Trenches Greater Than Five Feet

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

12.2 Excavation Safety

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

12.3 No Tort Liability of District

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

12.4 No Excavation without Permits

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

12.5 Discovery of Hazardous Waste and/or Unusual Conditions

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

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

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

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

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

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

13. Insurance and Bonds

13.1 Developer's Insurance

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

13.2 Contract Security – Bonds

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

13.2.1.1 Performance Bond

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

13.2.1.2 Payment Bond

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

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

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

14. Warranty/Guarantee/Indemnity

14.1 Warranty/Guarantee

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

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

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

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

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

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

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

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

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

14.2 Indemnity

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

15. Time

15.1 Notice to Proceed

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

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

15.2 Computation of Time / Adverse Weather

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

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

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

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

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

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

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

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

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

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

15.3 Hours of Work

15.3.1 Sufficient Forces

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

15.3.2 Performance During Working Hours

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

15.3.3 No Work during State Testing

Developer shall 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, or as soon as test dates are made available to the District.

15.4 Progress and Completion

15.4.1 Time of the Essence

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

15.4.2 No Commencement Without Insurance or Bonds

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

15.5 Schedule

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

15.6 Expeditious Completion

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

16. Extensions of Time – Liquidated Damages

16.1 Liquidated Damages

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

16.2 Excusable Delay

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

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

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

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

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

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

16.3 No Additional Compensation for Delays within Developer's Control

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

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

16.3.1.1.1 The District is responsible for the delay.

16.3.1.1.2 The delay is unreasonable under the circumstances involved.

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

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

16.4 Float or Slack in the Schedule

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

17. Changes in the Work

17.1 No Changes without Authorization

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

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

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

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

17.2 Architect Authority

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

17.3 Change Orders

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

17.3.1 A description of a change in the Work.

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

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

17.3.2 Changes in Guaranteed Maximum Price

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

17.3.3 Unknown and/or Unforeseen Conditions

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

17.4 Proposed Change Order

17.4.1 Definition of Proposed Change Order

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

17.4.2 Changes in Guaranteed Maximum Price

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

17.4.3 Changes in Time

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

17.4.4 Unknown and/or Unforeseen Conditions

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

17.5 Proposed Change Order Certification

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

17.6 Format for Proposed Change Order

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

17.6.2 Labor

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

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

17.6.3 Materials

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

17.6.4 Equipment

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

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

17.6.5 Overhead and Profit.

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

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17.7 Format for Change Order Request and Proposed Change Order

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

	SUBCONTRACTOR PERFORMED WORK	**ADD**	**DEDUCT**
(a)	**Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Subcontractor's overhead and profit,** not to exceed five percent (5%) of **Item (d)**		
(f)	**Subtotal**		
(g)	**Add Developer's overhead and profit**, not to exceed four and one-half percent (4.5%) of **Item (f)**		
(h)	**Subtotal**		
(i)	**Add Bond and Insurance,** at Developer's Cost, not to exceed one and one half percent (1.5%) of **Item (h)**		
(j)	**TOTAL**		
(k)	**Time** (zero unless indicated; "TBD" not permitted)	**__ Calendar Days**	

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	DEVELOPER PERFORMED WORK		
(a)	**Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**Subtotal**		
(e)	**Add Developer's overhead and profit,** not to exceed nine and one-half percent (9.5%) of **Item (d).**		
(f)	**Subtotal**		
(g)	**Add Bond and Insurance,** at Developer's Cost, not to exceed one and one half percent (1.5%) of **Item (h)**		
(h)	**TOTAL**		
(i)	**Time** (zero unless indicated; "TBD" not permitted)	**__ Calendar Days**	

17.8 Change Order Certification

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

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

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

17.9 Determination of Change Order Cost

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

17.9.1.1 District acceptance of a COR or PCO.

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

17.9.1.3 By agreement between District and Developer.

17.10 Deductive Change Orders

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

17.11 Addition or Deletion of Alternate Bid Item(s)

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

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

17.12 Construction Change Directives

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

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

17.13 Force Account Directives

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

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

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

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

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

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

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

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

17.14 Price Request

17.14.1 Definition of Price Request

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

17.14.2 Scope of Price Request

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

17.15 Accounting Records

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

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

17.16 Notice Required

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

17.17 Applicability to Subcontractors

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

17.18 Alteration to Change Order Language

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

17.19 Failure of Developer to Execute Change Order

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

18. Requests For Information

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

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

19. Payments

19.1 Guaranteed Maximum Price

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

19.2 Applications for Tenant Improvement Payments

19.2.1 Procedure for Applications for Tenant Improvement Payments

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

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

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

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

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

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

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

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

19.2.1.1.8 A total of the retentions held.

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

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

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

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

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

19.2.1.1.14 A certification by the Developer of the following:

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

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

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

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

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

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

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

19.2.2 Prerequisites for Tenant Improvement Payments

19.2.2.1 First Payment Request

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

19.2.2.1.1 Installation of the Project sign.

19.2.2.1.2 Installation of field office.

19.2.2.1.3 Installation of temporary facilities and fencing.

19.2.2.1.4 Schedule of Values.

19.2.2.1.5 Developer's Construction Schedule.

19.2.2.1.6 Schedule of unit prices, if applicable.

19.2.2.1.7 Submittal Schedule.

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

19.2.2.1.9 Copies of necessary permits.

19.2.2.1.10 Initial progress report.

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

19.2.2.1.12 All bonds and insurance endorsements; and

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

19.2.3 Subsequent Payment Requests

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

19.2.4 No Waiver of Criteria

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

19.3 District's Approval of Application for Payment

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

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

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

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

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

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

19.3.3.2 Results of subsequent tests and inspections.

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

19.3.3.4 Specific qualifications expressed by the Architect.

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

19.3.5 Payments to Developer

19.3.5.1 Within thirty (30) days after approval of the Application for Payment, Developer shall be paid a sum equal to ninety-five percent (95%), of the value of the 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 the Developer, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of the Contract Documents, and the District shall have the right subsequently to correct any error made in any estimate for payment.

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

19.3.6 No Waiver

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

19.3.7 Warranty of Title

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

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

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

19.4 Decisions to Withhold Payment

19.4.1 Reasons to Withhold Payment

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

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

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

19.4.1.3 Failure to provide to the District a complete, monthly report demonstrating that Developer and its Subcontractors are complying with the requirements of Public Contract Code section 2600 et seq., unless Developer and its subcontractors have agreed to be bound by a Project Labor Agreement as provided in Education Code section 17407.5. ("Skilled and Trained Workforce Requirements").

19.4.1.3.1 Failure to provide a monthly report is cured by providing a complete report.

19.4.1.3.2 Failure to demonstrate compliance with the Skilled and Trained Workforce Requirements is cured by providing a plan to achieve substantial compliance with the Skilled and Trained Workforce Requirements, with respect to the relevant apprenticeable occupation, prior to completion of the Project.

19.4.1.4 Liquidated damages assessed against the Developer.

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

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

19.4.1.7 Unsatisfactory prosecution of the Work by the Developer.

19.4.1.8 Failure to store and properly secure materials.

19.4.1.9 Failure of the Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction

Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

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

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

19.4.1.12 Unauthorized deviations from the Contract Documents.

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

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

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

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

19.4.1.17 Failure to properly maintain or clean up the Site.

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

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

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

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

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

19.4.1.23 Developer is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

19.4.2 Reallocation of Withheld Amounts

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

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

19.4.3 Payment After Cure

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

19.5 Subcontractor Payments

19.5.1 Payments to Subcontractors

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

19.5.2 No Obligation of District for Subcontractor Payment

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

19.5.3 Joint Checks

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Developer and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, or a material or equipment supplier, or any obligation from the District to such Subcontractor or a material or equipment supplier or rights in such Subcontractor against the District.

20. Completion of the Work

20.1 Completion

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

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

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

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

20.2 Close-Out/Certification Procedures

20.2.1 Punch List

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

responsibility of the Developer to complete all Work in accordance with the Contract Documents.

20.2.2 Close-Out/Certification Requirements

20.2.2.1 Utility Connections

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

20.2.2.2 As-Builts/Record Drawings and Record Specifications

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

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 employ a competent draftsman to transfer the As-Built Drawings information to the most current version of AutoCAD or Building Information Modeling ("BIM") or other 3d imaging model that is, at that time, currently utilized for plan check submission by either the District, the Architect, OPSC, and/or DSA, and print a complete set of transparent sepias. When completed, Developer shall deliver corrected sepias and diskette/CD/other data storage device acceptable to District with AutoCAD or BIM or other 3d imaging model file to the District.

20.2.3 Maintenance Manuals

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

20.2.4 Source Programming

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

20.2.5 Verified Reports

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

20.3 Final Inspection

20.3.1 Developer shall comply with Punch List procedures as provided herein, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Developer demobilize its forces prior to completion of the Punch List without District's prior written approval. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

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

20.3.3 Final Inspection Requirements

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

20.3.3.1.1 The Work has been completed.

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

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

20.3.3.1.4 Electrical circuits scheduled in panels and disconnect switches labeled.

20.3.3.1.5 Painting and special finishes complete.

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

20.3.3.1.7 Tops and bottoms of doors sealed.

20.3.3.1.8 Floors waxed and polished as specified.

20.3.3.1.9 Broken glass replaced and glass cleaned.

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

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

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

20.3.3.1.13 Final cleanup, as provided herein.

20.4 Costs of Multiple Inspections

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

20.5 Partial Occupancy or Use Prior to Completion

20.5.1 District's Rights to Occupancy

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

20.5.2 Inspection Prior to Occupancy or Use

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

20.5.3 No Waiver

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

21. Final Payment and Retention

21.1 Final Payment

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

21.2 Prerequisites for Final Payment

The following conditions must be fulfilled prior to Final Payment:

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

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

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

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

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

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

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

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

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

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

21.3 Retention

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

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

21.3.1.2 After the satisfaction of the conditions set forth herein.

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

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

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

21.4 Substitution of Securities

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

22. Uncovering of Work

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

23. Nonconforming Work and Correction of Work

23.1 Nonconforming Work

23.1.1 Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other

contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

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

23.2 Correction of Work

23.2.1 Correction of Rejected Work

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

23.2.2 One-Year Warranty Corrections

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

23.3 District's Right to Perform Work

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

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

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

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

23.3.2.3 That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

24. Termination And Suspension

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

25. Claims Process

25.1 Performance during Claim Process

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

25.2 Definition of Claim

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

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

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

25.2.1.3 An amount of payment disputed by the District.

25.3 Claims Presentation

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

25.3.2 The Claim shall identify:

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

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

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

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

25.3.3 The Claim shall include the following certification by the Developer:

25.3.3.1 The undersigned Developer certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Developer.

25.3.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

25.4 Claim Resolution pursuant to Public Contract Code section 9204

25.4.1 STEP 1:

25.4.1.1 Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, the District shall conduct a reasonable review of the Claim and, within a period **not to exceed 45 days**, shall provide the

Developer a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Developer may, **by mutual agreement**, extend the time period to provide a written statement. If the District needs approval from its governing body to provide the Developer a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, the District shall have **up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension**, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.

25.4.1.1.1 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

25.4.1.2 Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Developer must comply with the sections below regarding Public Contract Code section 20104 et seq. and Government Code Claim Act Claims.

25.4.1.3 If the District fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of Developer.

25.4.2 STEP 2:

25.4.2.1 If Developer disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Developer may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the District shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

25.4.2.2 Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its

written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

25.4.3 STEP 3:

25.4.3.1 Any disputed portion of the claim, as identified by Developer in writing, shall be submitted to nonbinding mediation, with the District and Developer sharing the associated costs equally. The District and Developer shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

25.4.3.1.1 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

25.4.3.2 Unless otherwise agreed to by the District and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

25.4.4 STEP 4:

25.4.4.1 If mediation under this section does not resolve the parties' dispute, the District may, but does not require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

25.5 Subcontractor Pass-Through Claims

25.5.1 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a District because privity of contract does not exist, the contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Developer present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

25.5.2 Within 45 days of receipt of this written request from a subcontractor, Developer shall notify the subcontractor in writing as to whether the

Developer presented the Claim to the District and, if Developer did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

25.5.3 Developer shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against Claims by Subcontractors.

25.6 Government Code Claim Act Claim

25.6.1 If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements, including those pursuant to Public Contract Code section 9204, the Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Developer's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Developer submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

25.7 Claim Resolution pursuant to Public Contract Code section 20104 et seq.

25.7.1 In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between Contractor and District by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.

25.7.1.1 Developer shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

25.7.1.2 For claims of less than fifty thousand dollars ($50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the Developer.

25.7.1.2.1 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

25.7.1.2.2 District's written response to the documented Claim shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Developer to produce the additional information, whichever is greater.

25.7.1.3 For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Developer.

25.7.1.3.1 If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Developer.

25.7.1.3.2 The District's written response to the claim, as further documented, shall be submitted to the Developer within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Developer to produce the additional information or requested documentation, whichever is greater.

25.7.1.4 If Developer disputes the District's written response, or the District fails to respond within the time prescribed, Developer may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

25.7.1.5 Following the meet and confer conference, if the claim or any portion of it remains in dispute, the Developer shall file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

25.7.1.6 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

25.7.1.7 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act, (commencing with Section 2016) of Chapter 1 of Title 4 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

25.7.1.8 The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

25.7.2 Developer shall bind its Subcontractors to the provisions of this Section and will hold the District harmless against disputes by Subcontractors.

25.8 Claim Resolution Non-Applicability

25.8.1 The procedures for dispute and claim resolution set forth in this Article shall not apply to the following:

25.8.1.1 Personal injury, wrongful death or property damage claims.

25.8.1.2 Latent defect or breach of warranty or guarantee to repair.

25.8.1.3 Stop payment notices.

25.8.1.4 District's rights set forth in the Article on Suspension and Termination.

25.8.1.5 Disputes arising out of labor compliance enforcement by the Department of Industrial Relations; or

25.8.1.6 District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

25.9 Attorney's Fees

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

26. State Labor, Wage & Hour, Apprentice, And Related Provisions

26.1 Labor Compliance and Enforcement

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Developer specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the Developer and all Subcontractors shall timely furnish complete and accurate electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

26.2 Wage Rates, Travel, and Subsistence

26.2.1 Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. Developer shall obtain and post a copy of these wage rates at the job site.

26.2.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

26.2.3 Developer shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Developer or any Subcontractor and such workers.

26.2.4 If, prior to execution of the Facilities Lease, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

26.2.5 Pursuant to Labor Code section 1775, Developer shall, as a penalty, forfeit the statutory amount (believed by the District to be currently two hundred dollars ($200) to District for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Developer or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each

worker was paid less than the prevailing wage rate, shall be paid to each worker by Developer.

26.2.6 Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and that minimum wage rate shall be retroactive to time of initial employment of the person in that classification.

26.2.7 Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.

26.2.8 Developer shall post at appropriate conspicuous points on the Project Site a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Developer shall post a sign-in log for all workers and visitors to the Site, a list of all Subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

26.3 Hours of Work

26.3.1 As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day of work. The time of service of any worker employed at any time by Developer or by any Subcontractor on any subcontract under the Contract Documents upon the Work or upon any part of the Work contemplated by the Contract Documents shall be limited and restricted by Developer to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Developer in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

26.3.2 Developer shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Developer in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

26.3.3 Pursuant to Labor Code section 1813, Developer shall, as a penalty, forfeit the statutory amount (believed by the District to be currently twenty-five dollars ($25)) to the District for each worker employed in the execution of the Contract Documents by Developer or by any Subcontractor for each calendar day during which a worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one

calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code.

26.3.4 Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

26.4 Payroll Records

26.4.1 Developer shall upload, and shall cause each Subcontractor performing any portion of the Work under this Contract to upload, an accurate and complete certified payroll record ("CPR") electronically using DIR's eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online on a weekly basis and within ten (10) days of any request by the District or Labor Commissioner at http://www.dir.ca.gov/Public-Works/Certified/Payroll-Reporting.html or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work.

26.4.2 The CPRs enumerated hereunder shall be filed directly with the DIR on a weekly basis or to the requesting party, whether the District or DIR, within ten (10) days after receipt of each written request. The CPRs from the Developer and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District may not make any payment to Developer until:

26.4.2.1 The Developer and/or its Subcontractor(s) provide CPRs acceptable to the District and DIR.

26.4.2.2 Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District or DIR in a timely manner may directly delay the District's review and/or audit of the CPRs and Developer's payment.

26.4.3 All CPRs shall be available for inspection at all reasonable hours at the principal office of Developer on the following basis:

26.4.3.1 A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

26.4.3.2 CPRs shall be made available for inspection or furnished upon request or as required by regulation to a representative of the District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the DIR.

26.4.3.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, Division of Apprenticeship Standards, or the Division of Labor Standards

Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

26.4.4 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, Division of Labor Standards Enforcement, or DIR shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Developer awarded the Project under the Contract Documents or performing under the Contract Documents shall not be marked or obliterated.

26.4.5 Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days of a change in location of the records, provide a notice of change of location and address.

26.4.6 In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty, forfeit up to one hundred dollars ($100) to District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from Tenant Improvement Payments then due.

26.5 [Reserved]

26.6 Apprentices

26.6.1 Developer acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

26.6.2 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

26.6.3 Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

26.6.4 Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3, of the

Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

26.6.5 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Developer or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

26.6.6 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractor may be required to make contributions to the apprenticeship program.

26.6.7 If Developer or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

26.6.7.1 Be denied the right to bid on any subsequent project for one (1) year from the date of such determination.

26.6.7.2 Forfeit, as a penalty, to District the full amount stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

26.6.7.3 Developer and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

26.6.7.4 Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

26.7 Skilled and Trained Workforce

26.7.1 Developer and its subcontractors at every tier hereby provides 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, for the applicable dates, either (A) the number of the skilled journeypersons employed to perform work on the Contract or Project by the 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:

APPLICABLE DATES	% REQUIREMENT
1/1/2016 – 12/31/2017	At least 30%
1/1/2018 – 12/31/2018	At least 40%
1/1/2019 – 12/31/2019	At least 50%
1/1/2020 – 12/31/2020	At least 60%

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, the 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 1 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 the 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 Non-Discrimination

26.8.1 Developer herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, sexual orientation, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3 of Title 2 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

26.8.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

26.9 Labor First Aid

Developer shall maintain emergency first aid treatment for Developer's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

27. [Reserved]

28. Miscellaneous

28.1 Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

28.1.1 Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

28.1.2 Section 4552 of the Government Code states in pertinent part:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

28.1.3 Section 4553 of the Government Code states in pertinent part:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

28.1.4 Section 4554 of the Government Code states in pertinent part:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

28.1.5 Under this Article, "public purchasing body" is District and "bidder" is Developer.

28.2 Excise Taxes

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Maximum Price.

28.3 Taxes

Guaranteed Maximum Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 et seq. of the Revenue and Taxation Code, Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

28.4 Shipments

All shipments must be F.O.B. destination to Site or approved sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Maximum Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

28.5 Compliance with Government Reporting Requirements

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project of which it is part, or for any other reason, Developer shall comply with those reporting requirements at the request of the District at no additional cost.

[END OF DOCUMENT]

EXHIBIT D-1

SPECIAL CONDITIONS

1. Miscellaneous

1.1. Master Key.

Upon request, the District may, at its own discretion, provide a master key to the school site for the convenience of the Developer. The Developer agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the master key is lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.

1.2. Maintaining Services.

The Developer is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Developer shall provide temporary services to all facilities interrupted by Developer's Work.

1.3. Maintaining Utilities.

The Developer shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.

1.4. Confidentiality.

Developer shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Developer encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

1.5. Work during Instructional Time.

Developer affirms that Work may be performed during ongoing instruction in existing facilities. If so, Developer agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

1.6. No Work during Student Testing.

Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests.

2. Substitution for Specified Items

2.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of

manufacturer, that Specification shall be deemed to be followed by the words "or equal." Developer may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.

2.1.1. If the material, process, or article offered by Developer is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Developer shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

2.1.2. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Developer shall not be entitled to request a substitution with respect to those materials, products or services.

2.2. A request for a substitution shall be submitted as follows:

2.2.1. Developer shall notify the District in writing of any request for a substitution at least ten (10) days prior to bid opening as indicated in the Instructions to Bidders.

2.2.2. Requests for Substitutions after award of the Contract shall be submitted within thirty-five (35) days of the date of the Notice to Proceed with Construction.

2.3. Within 35 days after the date of the Notice of Award, Developer shall provide data substantiating a request for substitution of "an equal" item, including but not limited to the following:

2.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;

2.3.2. Available maintenance, repair or replacement services;

2.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

2.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and

2.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

2.4. No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Developer. The Developer warrants that if substitutes are approved:

2.4.1. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and

achieve the results called for by the general design and the Contract Documents;

2.4.2. The Developer provides the same warranties and guarantees for the substitute that would be provided for that specified;

2.4.3. The Developer shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Developer without a change in the Contract Price or Contract Time;

2.4.4. The Developer shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

2.4.5. The Developer shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Developer agrees to execute a deductive Change Order to reflect that credit.

2.5. In the event Developer furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Developer.

2.6. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

2.7. Developer shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods. District may deduct those costs from any amounts owing to the Developer for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Developer for all the professional services and/or DSA fees or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods arising herein.

3. Termination

3.1. Emergency Termination Pursuant to Public Contracts Act of 1949

3.1.1. This Facilities Lease is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

3.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being

performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

3.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

3.1.2. Compensation to the Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price may control. The District, at its sole discretion, may adopt the Schedule of Values Price as the value of the work done or any portion thereof.

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 201__, and is made by and between Blach Construction Company ("Developer"), as Lessor, and the Cabrillo Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 2017, (the "Lease") for the leasing by Developer to District of the Project Site and Project in Half Moon Bay, California, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Developer in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term for the Lease Payments under the Facilities Lease commenced on _____, 20__ and will expire at 11:59 P.M. on _____, 20__.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

Dated: _____ __ , 201__	Dated: _____ __ , 201__
Cabrillo Unified School District	Blach Construction Company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT F

CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

[To Be Attached.]

EXHIBIT G

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be Attached.]

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: November 9, 2017

☒ **ACTION**
☐ **CONSENT**
☐ **DISCUSSION**
☐ **INFORMATION**

BOARD AGENDA NUMBER: 15.c

BOARD AGENDA ITEM: Approve Cabrillo Unified School District Governing Board Policy Updates and Adopt the Proposed Revisions as Recommended by the California School Boards Association

DEPARTMENT: Governing Board

CONTACT PERSON: Jane Yuster, Superintendent
John Corry, Assistant Superintendent, Personnel and Pupil Services
Joy Dardenelle, Assistant Superintendent, Curriculum and Instruction
Crystal Leach, Chief Business Officer

BACKGROUND INFORMATION:

The Cabrillo Unified School District (CUSD) participates in the California School Boards Association's (CSBA) *Policy Online and Manual Maintenance Service.* One important component of this optional service is that participating districts receive a quarterly "*Policy Maintenance Report*" to help keep Board policies up to date and fully compliant. Most often, the proposed changes are mandate-driven. In such instances, staff will suggest that the Board waive additional readings and adopt the suggested revisions en masse and via consent. In those instances, when a quarterly maintenance review indicates: 1) a need for a change in a policy that provides optional courses of action or 2) the need for a new policy to address a particular issue, staff will suggest that the Board engage in a first and second reading of the document prior to considering policy adoption.

REPORT/PROPOSAL:

This month, BP 5133 and 5113.1 are provided for adoption. These Board policies have been reviewed by appropriate staff and are submitted for your consideration. Staff has further concluded that the proposed revisions reflect new mandates and/or additional CSBA suggested wordsmithing that could be considered for adoption under action items. These policies are included in this Board packet for review and consideration of action.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve Cabrillo Unified School District Governing Board policy updates and adopt the proposed revisions as recommended by the California School Boards Association.

CABRILLO UNIFIED SCHOOL DISTRICT
POLICY GUIDE SHEET
November2017

Note: Descriptions below identify revisions made to CUSD's Board policies. Editorial changes may have also been made.

BP/AR 5113 - Absences and Excuses
(BP/AR revised)

Policy updated to reflect the requirement for a board resolution approving reasonable methods by which students can verify absences due to illness or quarantine. Policy also deletes section on "Effect of Absence on Grades/Credits," as that material is covered in BP/AR 5121 - Grades/Evaluation of Student Achievement and BP 6154 - Homework/Makeup Work. Regulation updated to reflect **NEW LAW** (AB 1593, 2016) which provides that a student's attendance at his/her own naturalization ceremony constitutes an excused absence. Regulation also includes parent notification requirement formerly in BP, and adds notifications that a student may be excused for religious exercises or instruction and that a student's grade will not be lowered following an excused absence provided that missed schoolwork is completed within a reasonable period of time.

BP/AR 5113.1 - Chronic Absence and Truancy
(BP/AR revised)

Policy updated to reflect the inclusion of a chronic absence indicator in the California School Dashboard effective in the fall of 2018, add examples of interventions for attendance problems, and delete section on "School Attendance Review Board" since that material is now covered in BP/AR 5113.12 - District School Attendance Review Board. Regulation updated to delete references to 5 CCR 15497.5 (repealed), which formerly contained the LCAP template that is now available on the CDE web site, and to delete section on the appointment and general duties of attendance supervisors, now covered in AR 5113.11 - Attendance Supervision.

Cabrillo USD
Board Policy
Students

BP 5113

ABSENCES AND EXCUSES

The Governing Board believes that regular attendance plays an important role in student achievement. The Board shall work with parents/guardians and students to ensure their compliance with all state attendance laws and may use appropriate legal means to correct problems of chronic absence or truancy.

(cf. 5112.1 - Exemptions from Attendance)
(cf. 5112.2 - Exclusions from Attendance)
(cf. 5113.1 - Chronic Absence and Truancy)
(cf. 5121 - Grades/Evaluation of Student Achievement)
(cf. 6154 - Homework/Makeup Work)

Absence from school shall be excused only for health reasons, family emergencies, and justifiable personal reasons, as permitted by law, Board policy, and administrative regulation. (Education Code 48205)

Student absence for religious instruction or participation in religious exercises away from school property may be considered excused subject to law and administrative regulation. (Education Code 46014)

Inasmuch as school attendance and class participation are integral to students' learning experiences, parents/guardians and students shall be encouraged to schedule medical and other appointments during non-school hours.

Students shall not be absent from school without their parents/guardians' knowledge or consent, except in cases of medical emergency or, as authorized pursuant to Education Code 46010.1, for a confidential medical appointment.

The Board shall, by resolution entered into its minutes, approve reasonable methods that may be used to verify student absences due to illness or quarantine. (5 CCR 421)

Legal Reference:
EDUCATION CODE
1740 Employment of personnel to supervise attendance (county superintendent)
37201 School month
37223 Weekend classes
41601 Reports of average daily attendance
42238-42250.1 Apportionments
46000 Records (attendance)
46010-46014 Absences
46100-46119 Attendance in kindergarten and elementary schools
46140-46147 Attendance in junior high and high schools
48200-48208 Children ages 6-18 (compulsory full-time attendance)

48210-48216 Exclusions from attendance
48240-48246 Supervisors of attendance
48260-48273 Truants
48292 Filing complaint against parent
48320-48324 School attendance review boards
48340-48341 Improvement of student attendance
48980 Parental notifications
49067 Unexcused absences as cause of failing grade
49701 Provisions of the interstate compact on educational opportunities for military children
ELECTIONS CODE
12302 Student participation on precinct boards
FAMILY CODE
6920-6929 Consent by minor for medical treatment
VEHICLE CODE
13202.7 Driving privileges; minors; suspension or delay for habitual truancy
WELFARE AND INSTITUTIONS CODE
601-601.4 Habitually truant minors
11253.5 Compulsory school attendance
CODE OF REGULATIONS, TITLE 5
306 Explanation of absence
420-421 Record of verification of absence due to illness and other causes
ATTORNEY GENERAL OPINIONS
87 Ops.Cal.Atty.Gen. 168 (2004)
66 Ops.Cal.Atty.Gen. 244 (1983)
COURT DECISIONS
American Academy of Pediatrics et al v. Lungren et al (1997) 16 Cal.4th 307
Management Resources:
CSBA PUBLICATIONS
Improving Student Achievement by Addressing Chronic Absence, Policy Brief, December 2010
WEB SITES
CSBA: http://www.csba.org

~~The Governing Board believes that regular attendance plays a key role in student achievement. The Board recognizes its responsibility under the law to ensure that students attend school regularly. Parents/guardians of children aged 6 to 18 are obligated to send their children to school unless otherwise provided by law. The Board shall abide by all state attendance laws and may use appropriate legal means to correct the problems of excessive absence or truancy.~~

~~(cf. 5112.1 - Exemptions from Attendance)~~
~~(cf. 5112.2 - Exclusions from Attendance)~~
~~(cf. 5113.1 - Truancy)~~

~~Excused Absences~~

~~Absence from school shall be excused only for health reasons, family emergencies and justifiable personal reasons, as permitted by law, Board policy and administration regulations. (Education Code 46010, 48205, 48216)~~

~~Inasmuch as class participation is an integral part of students' learning experiences, parents/guardians and students shall be encouraged to schedule medical appointments during nonschool hours.~~

At the beginning of each academic year, notifications shall be sent to the parents/guardians of all students, and to all students in grades 7 through 12, informing them that school authorities may excuse any student from school to obtain confidential medical services without the consent of the student's parent/guardian. (Education Code 46010.1)

(cf. 5145.6 - Parental Notifications)

Students in grades K-6 shall not be absent from school without their parents/guardians' knowledge or consent except in cases of medical emergency. Students in grades 7-12 shall not be absent from school without their parents/guardians' knowledge or consent except in cases of medical emergency or confidential medical appointment.

Student absence for religious instruction or participation in religious exercises away from school property may be considered excused subject to law and administrative regulations. (Education Code 46014)

A student's grades may be affected by excessive unexcused absences in accordance with Board policy.

Non-attendance and Graduation

Attendance may be considered in determining whether a graduating senior will participate in the graduation ceremony.

(cf. 5121 - Grades/Evaluation of Student Achievement)
(cf. 6154 - Homework/Makeup Work)

Legal Reference:
EDUCATION CODE
1740 Employment of personnel to supervise attendance (county superintendent)
2550-2558.6 Computation of revenue limits
37201 School month
37223 Weekend classes
41601 Reports of average daily attendance
42238-42250.1 Apportionments
46000 Records (attendance)
46010-46014 Absences
46100-46119 Attendance in kindergarten and elementary schools
46140-46147 Attendance in junior high and high schools
48200-48208 Children ages 6-18 (compulsory full-time attendance)
48210-48216 Exclusions from attendance
48240-48246 Supervisors of attendance
48260-48273 Truants
48292 Filing complaint against parent
48320-48324 School attendance review boards
48340-48341 Improvement of student attendance
49067 Unexcused absences as cause of failing grade
ELECTIONS CODE
12302 Student participation on precinct boards

~~FAMILY CODE~~
~~6920-6929 Consent by minor~~
~~VEHICLE CODE~~
~~13202.7 Driving privileges; minors; suspension or delay for habitual truancy~~
~~WELFARE AND INSTITUTIONS CODE~~
~~601-601.4 Habitually truant minors~~
~~11253.5 Compulsory school attendance~~
~~CODE OF REGULATIONS, TITLE 5~~
~~306 Explanation of absence~~
~~420-421 Record of verification of absence due to illness and other causes~~
~~ATTORNEY GENERAL OPINIONS~~
~~66 Ops.Cal.Atty.Gen. 245, 249 (1983)~~
~~COURT DECISIONS~~
~~American Academy of Pediatrics et al v. Lungren et al (1997) 16 Cal.4th 307~~

~~Management Resources:~~
~~CDE MANAGEMENT ADVISORIES~~
~~0114.98 School Attendance and CalWORKS, Management Bulletin 98-01~~
~~CSBA ADVISORIES~~
~~0520.97 Welfare Reform and Requirements for School Attendance~~
~~WEB SITES~~
~~CSBA: http://www.csba.org~~

Policy: 5113 **CABRILLO UNIFIED SCHOOL DISTRICT**
Adopted: December 11, 2008 **Half Moon Bay, California**
Revised: November 9, 2017

Cabrillo USD

Board Policy

Chronic Absence And Truancy

BP 5113.1
Students

The Governing Board believes that absenteeism, whatever the cause, may be an early warning sign of poor academic achievement and may put students at risk of dropping out of school. The Board desires to ensure that all students attend school in accordance with the state's compulsory education law and take full advantage of educational opportunities provided by the district.

(cf. 5113 - Absences and Excuses)
(cf. 5113.11 - Attendance Supervision)

The Superintendent or designee shall establish a system to accurately track student attendance in order to identify individual students who are chronic absentees and truants, as defined in law and administrative regulation, and to identify patterns of absence throughout the district. He/she shall provide the Board with data on school attendance, chronic absence, and truancy rates districtwide, for each school, and disaggregated for each numerically significant student subgroup as defined in Education Code 52052. Such data shall be used in the development of annual goals and specific actions for student attendance and engagement to be included in the district's local control and accountability plan and other applicable school and district plans.

(cf. 0400 - Comprehensive Plans)
(cf. 0420 - School Plans/Site Councils)
(cf. 0450 - Comprehensive Safety Plan)
(cf. 0460 - Local Control and Accountability Plan)
(cf. 0500 - Accountability)

The Superintendent or designee shall develop strategies that focus on prevention of attendance problems, which may include, but are not limited to, efforts to provide a safe and positive school environment, relevant and engaging learning experiences, school activities that help develop students' feelings of connectedness with the school, school-based health services, and incentives and rewards to recognize students who achieve excellent attendance or demonstrate significant improvement in attendance. The Superintendent or designee also shall develop strategies that enable early outreach to students as soon as they show signs of poor attendance.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 5126 - Awards for Achievement)
(cf. 5131 - Conduct)
(cf. 5131.2 - Bullying)
(cf. 5137 - Positive School Climate)
(cf. 5141.6 - School Health Services)
(cf. 5145.3 - Nondiscrimination/Harassment)

The Superintendent or designee shall consult with students, parents/guardians, school staff, and community agencies, as appropriate, to identify factors contributing to chronic absence and truancy.

Interventions for students with serious attendance problems shall be designed to meet the specific needs of the student and may include, but are not limited to, health care referrals, transportation assistance, counseling for mental or emotional difficulties, academic supports, efforts to address school or community safety concerns, discussions with the student and parent/guardian about their attitudes regarding schooling, or other strategies to remove identified barriers to school attendance. The Superintendent or designee may collaborate with child welfare services, law enforcement, courts, public health care agencies, other government agencies, and/or medical, mental health, and oral health care providers to make alternative educational programs and support services available for students and families.

(cf. 1020 - Youth Services)
(cf. 5030 - Student Wellness)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 5147 - Dropout Prevention)
(cf. 6158 - Independent Study)
(cf. 6164.2 - Guidance/Counseling Services)
(cf. 6164.5 - Student Success Teams)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education of Children of Military Families)
(cf. 6175 - Migrant Education Program)
(cf. 6179 - Supplemental Instruction)
(cf. 6181 - Alternative Schools/Programs of Choice)
(cf. 6183 - Home and Hospital Instruction)
(cf. 6184 - Continuation Education)
(cf. 6185 - Community Day School)

Students who are identified as truant shall be subject to the interventions specified in law and administrative regulation.

(cf. 5113.12 - District School Attendance Review Board)

A student's truancy, tardiness, or other absence from school shall not be the basis for his/her suspension or expulsion. Alternative strategies and positive reinforcement for attendance shall be used whenever possible.

(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

The Superintendent or designee shall periodically report to the Board regarding the district's progress in improving student attendance rates for all students and for each numerically significant student population. Such information shall be used to evaluate the effectiveness of strategies implemented to reduce chronic absence and truancy and to make changes as needed. As appropriate, the Superintendent or designee shall engage school staff in program evaluation and improvement and in the determination of how to best allocate available community resources.

System: http://www.cal-schls.wested.org
Legal Reference:
EDUCATION CODE
1740-1742 Employment of personnel to supervise attendance (county superintendent)
37223 Weekend classes
46000 Records (attendance)
46010-46014 Absences
46110-46119 Attendance in kindergarten and elementary schools
46140-46147 Attendance in junior high and high schools
48200-48208 Children ages 6-18 (compulsory full-time attendance)
48225.5 Work permits, entertainment and allied industries
48240-48246 Supervisors of attendance
48260-48273 Truants
48290-48297 Failure to comply; complaints against parents
48320-48325 School attendance review boards
48340-48341 Improvement of student attendance
48400-48403 Compulsory continuation education
48900 Suspension and expulsion
49067 Unexcused absences as cause of failing grade
52052 Academic Performance Index; numerically significant student subgroups
60901 Chronic absence
GOVERNMENT CODE
54950-54963 The Ralph M. Brown Act
PENAL CODE
270.1 Chronic truancy; parent/guardian misdemeanor
272 Parent/guardian duty to supervise and control minor child; criminal liability for truancy
830.1 Peace officers
VEHICLE CODE
13202.7 Driving privileges; minors; suspension or delay for habitual truancy
WELFARE AND INSTITUTIONS CODE
256-258 Juvenile hearing officer
601-601.4 Habitually truant minors
11253.5 Compulsory school attendance
CODE OF REGULATIONS, TITLE 5
306 Explanation of absence
420-421 Record of verification of absence due to illness and other causes
COURT DECISIONS
L.A. v. Superior Court of San Diego County, (2012) 209 Cal.App.4th 976

Management Resources:
CSBA PUBLICATIONS
Attendance Awareness Month, Fact Sheet, September 2014
ATTENDANCE WORKS PUBLICATIONS
Count Us In! Working Together to Show that Every School Day Matters, 2014
The Power of Positive Connections: Reducing Chronic Absence Through PEOPLE: Priority Early Outreach for Positive Linkages and Engagement, 2014
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
School Attendance Review Board Handbook: A Road Map for Improved School Attendance and Behavior, 2015
School Attendance Improvement Handbook, 2000
WEB SITES
CSBA: http://www.csba.org
Attendance Works: http://www.attendanceworks.org
California Association of Supervisors of Child Welfare and Attendance: http://www.cascwa.org
California Department of Education: http://www.cde.ca.gov

California Healthy Kids Survey: http://chks.wested.org
California School Climate, Health, and Learning Survey

The Governing Board believes that excessive absenteeism, whether caused by excused or unexcused absences, may be an early warning sign of poor academic achievement and may put students at risk of dropping out of school. The Board desires to ensure that all students attend school in accordance with the state's compulsory education law and take full advantage of educational opportunities provided by the district.

(cf. 5113 - Absences and Excuses)

The Superintendent or designee shall establish a system to accurately track student attendance in order to identify individual students who are chronic absentees and truants, as defined in law and administrative regulation, and to identify patterns of absence throughout the district. He/she shall provide the Board with data on school attendance, chronic absence, and truancy rates for all district students, for each school, and for each numerically significant student subgroup as defined in Education Code 52052. Such data shall be disaggregated and used in the development of annual goals and specific actions for student attendance and engagement and for inclusion in the district's local control and accountability plan and other applicable school and district plans.

(cf. 0400 - Comprehensive Plans)
(cf. 0420 - School Plans/Site Councils)
(cf. 0450 - Comprehensive Safety Plan)
(cf. 0460 - Local Control and Accountability Plan)

The Superintendent or designee shall develop strategies that focus on prevention of attendance problems, which may include, but are not limited to, efforts to provide a safe and positive school environment, relevant and engaging learning experiences, school activities that help develop students' feelings of connectedness with the school, school-based health services, and incentives and rewards to recognize students who achieve excellent attendance or demonstrate significant improvement in attendance. The Superintendent or designee also shall develop strategies that enable early outreach to students as soon as they show signs of poor attendance.

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 5126 - Awards for Achievement)
(cf. 5131 - Conduct)
(cf. 5131.2 - Bullying)
(cf. 5137 - Positive School Climate)
(cf. 5141.6 - School Health Services)
(cf. 5145.3 - Nondiscrimination/Harassment)

The Superintendent or designee shall work with students, parents/guardians, school staff, and community agencies, as appropriate, to identify factors contributing to chronic absence and truancy.

He/she also may collaborate with child welfare services, law enforcement, courts, public health care agencies, other government agencies, and/or medical, mental health, and oral health care providers to ensure that alternative educational programs and nutrition, health care, and other support services are available for students and families and to intervene as necessary when students have serious attendance problems.

(cf. 1020 - Youth Services)
(cf. 5030 - Student Wellness)
(cf. 5146 - Married/Pregnant/Parenting Students)
(cf. 5147 - Dropout Prevention)
(cf. 6158 - Independent Study)
(cf. 6164.2 - Guidance/Counseling Services)
(cf. 6164.5 - Student Success Teams)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education of Children of Military Families)
(cf. 6175 - Migrant Education Program)
(cf. 6179 - Supplemental Instruction)
(cf. 6181 - Alternative Schools/Programs of Choice)
(cf. 6183 - Home and Hospital Instruction)
(cf. 6184 - Continuation Education)
(cf. 6185 - Community Day School)

Students who are identified as truants shall be subject to the interventions specified in law and administrative regulation.

A student's truancy, tardiness, or other absence from school shall not be the basis for his/her out-of-school suspension or expulsion. Alternative disciplinary strategies and positive reinforcement for attendance shall be used whenever possible.

(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

The Superintendent or designee shall periodically report to the Board regarding the district's progress in improving student attendance rates for all students and for each numerically significant student population. Such information shall be used to evaluate the effectiveness of strategies implemented to reduce chronic absence and truancy and to make changes as needed. As appropriate, the Superintendent or designee shall engage school staff in program evaluation and improvement and in identification of how to best allocate available community resources.

School Attendance Review Board

In accordance with law and administrative regulation, habitual truants may be referred to a school attendance review board (SARB).

The Board may submit a nomination to the County Superintendent of Schools for a person who will serve on the county SARB as a representative of school districts. (Education Code 48321)

The Board shall appoint members of the district's SARB, who may include, but are not limited to, a parent/guardian as well as representatives of the district; county probation department; county welfare department; county office of education; law enforcement agencies; community-based youth service centers; school guidance personnel; child welfare and attendance personnel; school or county health care personnel; school, county, or community mental health personnel;

the county district attorney's office; and the county public defender's office. (Education Code 48321)

The district's SARB shall operate in accordance with Education Code 48320-48325 and procedures established by the Superintendent or designee.

Legal Reference:
EDUCATION CODE
1740 Employment of personnel to supervise attendance (county superintendent)
37223 Weekend classes
41601 Reports of average daily attendance
46000 Records (attendance)
46010-46014 Absences
46110-46119 Attendance in kindergarten and elementary schools
46140-46147 Attendance in junior high and high schools
48200-48208 Children ages 6-18 (compulsory full-time attendance)
48225.5 Work permits, entertainment and allied industries
48240-48246 Supervisors of attendance
48260-48273 Truants
48290-482967 Failure to comply; complaints against parents
48320-48325 School attendance review boards
48340-48341 Improvement of student attendance
48400-48403 Compulsory continuation education
48900 Suspension and expulsion
Legal Reference: (continued)
EDUCATION CODE (continued)
49067 Unexcused absences as cause of failing grade
52052 Academic Performance Index; numerically significant student subgroups
60901 Chronic absence
GOVERNMENT CODE
54950-54963 The Ralph M. Brown Act
PENAL CODE
270.1 Chronic truancy; parent/guardian misdemeanor
272 Parent/guardian duty to supervise and control minor child; criminal liability for truancy
830.1 Peace officers
VEHICLE CODE
13202.7 Driving privileges; minors; suspension or delay for habitual truancy
WELFARE AND INSTITUTIONS CODE
256-258 Juvenile hearing officer
601-601.4 Habitually truant minors
11253.5 Compulsory school attendance
CODE OF REGULATIONS, TITLE 5
306 Explanation of absence
420-421 Record of verification of absence due to illness and other causes
15497.5 Local control and accountability plan template
COURT DECISIONS
L.A. v. Superior Court of San Diego County, (2012) 209 Cal.App.4th 976
Management Resources:
CSBA PUBLICATIONS
Attendance Awareness Month, Fact Sheet, September 2014
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The Power of Positive Connections: Reducing Chronic Absence Through PEOPLE: Priority Early Outreach for Positive Linkages and Engagement, 2014
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

~~*School Attendance Review Board Handbook, 2015*~~
~~*School Attendance Improvement Handbook, 2000*~~
~~*WEB SITES*~~
~~*CSBA: http://www.csba.org*~~
~~*Attendance Works: http://www.attendanceworks.org*~~
~~*California Association of Supervisors of Child Welfare and Attendance: http://www.cascwa.org*~~
~~*California Department of Education: http://www.cde.ca.gov*~~
~~*California Healthy Kids Survey: http://chks.wested.org*~~
~~*California School Climate, Health, and Learning Survey System: http://www.cal-schls.wested.org*~~
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Policy 5113.1
Adopted: December 11, 2008
Revised: February 10, 2011
Revised: February 12, 2013
Revised: November 9, 2017

CABRILLO UNIFIED SCHOOL DISTRICT
Half Moon Bay, California