Meeting Packet

Regular Governing Board Meeting Agenda

Regular Governing Board Meeting Agenda

CABRILLO UNIFIED SCHOOL DISTRICT

District Office Board Room
498 Kelly Avenue, Half Moon Bay, CA 94109
August 9, 2018 7:00 PM
(Closed Session 6:00 PM)

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

2. ROLL CALL / QUORUM

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

i. With respect to items of business discussed in closed session pursuant to (Education Code Section 35146); Consideration of student matters with confidential information involved.

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

c. Conference with Legal Counsel – Anticipate Litigation (Government code §54956.9).

Conference regarding anticipated litigation pursuant to Subdivision (b) of Section §54956.9.

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

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

   i. Cabrillo Unified Teachers' Association

   ii. California School Employees' Association, Chapter 485

f. Public Employee Evaluations: Superintendent (Government Code §54954.5, §54957).

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

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

None

12. DISCUSSION ITEMS

a. Discuss 2018-19 District and Site Staff Development Plans

12.a Green Sheet 2018-2019 Staff Development Plan.pdf (p. 8)

12.a.1 Professional Development 18-19 - Elementary.pdf (p. 9)

12.a.2 Professional Development 18-19 - Secondary (1).pdf (p. 10)

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 Cunha Intermediate School Outdoor Education to YMCA Camp Jones Gulch, La Honda, California, September 17 - 21, 2018

14.a Green Sheet Overnight Field Trip-Outdoor Ed.pdf (p. 11)

b. Approve Certificated Personnel Report

14.b Green Sheet Certifcated Personnel Report.pdf (p. 12)

c. Approve Classified Personnel Report

14.c Green Sheet Classified Personel Report.pdf (p. 14)

d. Approve the University of San Francisco Student Teaching Agreement

14.d Green Sheet USF Student Teaching Agreement.pdf (p. 16)

14.d.1 USF MOU Through 6-30-2023_Redacted.pdf (p. 17)

e. Approve the San Jose State University Student Teaching Agreement

14.e Green Sheet SJSU Student Teaching Agreement.pdf (p. 22)

14.e.1 18-08-09 SJSU Student Teacher Agreement 2018 to 2023_Cabrillo Unified School District.pdf (p. 23)

f. Approve the University of Southern California Student Teaching Agreement

14.f Green Sheet USC Student Teaching Agreement.pdf (p. 27)

14.f.1 USC Afflication greement.pdf (p. 29)

g. Approve Change in Workdays of the Behavior Intervention Specialist Position

14.g Green Sheet Change Workday Behavior Intervention Specialist Position.pdf (p. 35)

h. Approve Behavior Intervention Coordinator Job Description

14.h Green Sheet Behavior Intervention Coordinator Job Description.pdf (p. 36)

14.h.1 BIC Job Description.pdf (p. 37)

i. Approve Donations to Cabrillo Unified School District

14.i Green Sheet Donations to CUSD.pdf (p. 40)

j. Accept Enrollment Report: Tenth Month 2017-2018 School Year

14.j Green Sheet Enrollment Report.pdf (p. 41)

14.j.1 Period 10 Enrollment Report.pdf (p. 42)

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

14.k Green Sheet Quarterly Williams Complaint Report.pdf (p. 43)

14.k.1 Williams UCP Report 4-1-18 to 6-30-18.pdf (p. 44)

l. Approve and Adopt Minutes of June 21, 2018 Regular Governing Board Meeting

14.l Green Sheet Board Minutes 6-21-18.pdf (p. 45)

14.l.1 Minutes 6-21-18 Unadopted.pdf (p. 46)

m. Approve and Adopt Minutes of July 24, 2018 Special Governing Board Meeting

14.m Green Sheet Board Minutes 7-24-18.pdf (p. 52)

14.m.1 Board Minutes.pdf (p. 53)

n. Approve Declaration of District Property as Surplus

14.n Green Sheet District Property as Surplus.pdf (p. 55)

14.n.1 La Costa Surplus Inventory.pdf (p. 56)

15. ACTION ITEMS

a. Approve Amendment No. 2 to Facilities Lease by and Between Cabrillo Unified School District and Blach Construction Company

15.a Green Sheet Amendment No 2 Facilities Lease CUSD and Blach Construction.pdf (p. 57)

15.a.1 2018-08-01 Amendment No 2 to Cunha Building C Project_3284701_1(DMS).pdf (p. 59)

15.a.2 2017-08-01 EXHIBIT 1 TO AMENDMENT 2 - Facilities Lease and Exhibits_3284676_1(DMS) (2).pdf (p. 63)

b. Adopt Resolution No. 13-18 Certifying to the Board of Supervisors of San Mateo County All Proceedings in the June 5, 2018 General Obligation Bond Election

15.b Green Sheet Resolution No. 13-18 Certifying 6-5-18 GOB Election.pdf (p. 221)

15.b.1 Resolution 13-18 Certifying Election Results 6-5-18.pdf (p. 222)

15.b.2 Certification of June 5, 2018 Statewide Direct Primary Election-CUSD_Redacted.pdf (p. 225)

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 Updaed Policies.pdf (p. 232)

15.c.1 Policy Guide Sheet.pdf (p. 234)

15.c.2 Updated Policies.pdf (p. 236)

16. FUTURE BOARD AGENDA ITEMS

a. Receive Summer School Report

b. Receive State of the District Presentation

c. Approve Unaudited Actuals

d. Approve Measure M Citizens' Oversight Committee

17. FUTURE EVENTS/DATES/REQUESTS

a. August 20 - First Day of Classes for All Students

b. August 20 - Back to School Night, 6:00 p.m., TK Classrooms, Hatch Elementary School

c. August 20 - Back to School Night, 6:30 p.m., Pilarcitos High School

d. August 28 - Back to School Night, 6:00 p.m., Farallone View Elementary School

e. August 28 - Back to School Night, 6:00 p.m., El Granada Elementary School

f. August 29 - Back to School Night, 6:30 p.m., Kings Mountain Elementary School

g. September 3 - Holiday, All Sites Closed

h. September 5 - Back to School Night, 6:00 p.m., Half Moon Bay High School

i. September 11 - Big Lift Meeting, 3:00 p.m., District Office

j. September 11 - Super Tuesday, Staff Development Day, Minimum Day for All Students

k. September 11 - Chamber Education Committee Meeting, 4:00 p.m., District Office

l. September 12 - Back to School Night, 6:30 p.m., Manuel F. Cunha Intermediate School

m. September 13 - Regular Governing Board Meeting, 7:00 p.m., District Office (Closed Session 6:00 p.m.)

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: August 10, 2018

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

BOARD AGENDA NUMBER: 12.a

BOARD AGENDA ITEM: Discuss 2018-19 District and Site Staff Development Plans

DEPARTMENT: Curriculum/Instruction/Assessment

CONTACT PERSON: Joy Dardenelle, Assistant Superintendent, Curriculum & Instruction

BACKGROUND INFORMATION:

Per the CUTA/CUSD contract:

The 2018-19 District and Site Staff Development Plans includes one full day of professional development and six early release "Super" Tuesdays. The six early-release "Super" Tuesdays include three district-wide days and three site-based days. The district-wide professional development topics were planned in groups of elementary and secondary teams to target shared needs and goals. The topics for site-based professional development were determined by site teams. These professional development plans support the Strategic Education Plan (Local Control Accountability Plan – LCAP) goals of literacy and reclassification, college and career readiness, and school climate.

REPORT/PROPOSAL:

Please see attached document.

FINANCIAL IMPACT:

The financial impact is included in the Budget.

RECOMMENDATION:

Discuss the 2018-19 District and Site Staff Development Plans.

Cabrillo Unified School District Professional Development Plan 2018-2019

ELEMENTARY	Hatch	El Granada	Farallone View	Kings Mountain
August 15 (full day): District-wide	School Year Kick-off, Strategic Education Plan Overview and Afternoon: Bridges in Math	School Year Kick-off, Strategic Education Plan Overview and Afternoon: Bridges in Math	School Year Kick-off, Strategic Education Plan Overview and Afternoon: Bridges in Math	School Year Kick-off, Strategic Education Plan Overview and Afternoon: Bridges in Math
September 11 (2 hr. 40 min.): Site-based	Student Sudy Team (SST) training and long term planning	Math - Planning and instruction	English Learner Performance Expectations and Trauma Informed Practices	Math Curriculum and Instruction Split level
October 16 (2 hr. 40 min.): District-wide	Special Education and Bridges in Math	Special Education and Bridges in Math	Special Education and Bridges in Math	Special Education and Bridges in Math
January 22 (2 hr. 40 min.): District-wide	Panorama Survey and Bridges in Math	Panorama Survey and Bridges in Math	Panorama Survey and Bridges in Math	Panorama Survey and Bridges in Math
February 12 (2 hr. 40 min.): Site-based	Math planning and implementation	Math planning and instruction using data	Attention Deficit Hiperactivity Disorder (ADHD) and Dyslexia	Math Curriculum and Rigor
March 5 (2 hr. 40 min.): District-wide	Special Education and Bridges in Math	Special Education and Bridges in Math	Special Education and Bridges in Math	Special Education and Bridges in Math
April 9 (2 hr. 40 min.): Site-based	Social and Emotional Learning	Math instruction - embedding English Learner strategies	Environmental Science	Math Access and Enrichment

Cabrillo Unified School District Professional Development Plan 2018-2019

SECONDARY	HMBHS	Pilarcitos	Cunha
August 15 (full day): District-wide	School Year Kick-off, Strategic Education Plan Overview and Western Association of School Colleges (WASC) - Critical Academic Needs	School Year Kick-off, Strategic Education Plan Overview and Afternoon: Positive Behavioural Iinterventions and Supports (PBIS) Curriculum Planning	School Year Kick-off, Strategic Education Plan Overview and Vision for Education Year 2018-2019
September 11 (2 hr. 40 min.): Site- based	WASC - Focus Group Leaders	Restorative Justice	CPR Training and Restorative Justice
October 16 (2 hr. 40 min.): District-wide	Special Education and WASC	Special Education and Social-Emotional Learning/Trauma Informed Practice	Special Education and Trauma Informed Practices
January 22 (2 hr. 40 min.): Site-based	Panorama Survey and Horizontal & Vertical Alignment	Panorama Survey and Restorative Justice	Panorama Survey and Common Core State Standards
February 12 (2 hr. 40 min.): Site-based	WASC - Evidence Compilation - Revisit Curricular Maps - Lesson Plans	Social-Emotional Learning/Trauma Informed Practice	Trauma Informed Practices
March 5 (2 hr. 40 min.): District-wide	Special Education and Horizontal & Vertical Alignment	Special Education and Horizontal & Vertical Alignment	Special Education and Horizontal & Vertical Alignment
April 9 (2 hr. 40 min.): District-wide	Vertical Technology Alignment	Vertical Technology Alignment	Vertical Technology Alignment

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.a

BOARD AGENDA ITEM: Approve Overnight Field Trip for Cunha Intermediate School Outdoor Education to YMCA Camp Jones Gulch, La Honda, California, September 17 - 21, 2018

DEPARTMENT: Pupil Services

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent, Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

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

REPORT/PROPOSAL:

Matt Rippberger, Social Studies teacher of Cunha Intermediate School, is requesting that the Governing Board approve a field trip to YMCA Camp Jones Gulch in La Honda, California, from September 17 - 21, 2018, for Outdoor Education. There will be approximately 120 students participating and they will be chaperoned by 5 certificated staff members and 15 additional adults. The students, teachers, and chaperones will travel from Half Moon Bay to YMCA Camp Jones Gulch in Cabrillo Unified School District buses. The travel party will be staying at the YMCA Camp Jones Gulch, 11000 Pescadero Road, La Honda CA 94020.

FINANCIAL IMPACT:

There is no financial impact to the General Fund. The trip is paid for by the fundraising efforts of Cunha parents.

RECOMMENDATION:

Approve overnight field trip for Cunha Intermediate School Outdoor Education to YMCA Camp Jones Gulch, La Honda, California, September 17 - 21, 2018.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.b

BOARD AGENDA ITEM: Approve Certificated Personnel Report

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent, Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

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

1. OFFER OF PROBATIONARY EMPLOYMENT FOR 2018-2019

Laura Butterfoss, Resource Specialist, Cunha Intermediate School, effective August 15, 2018.

Michael Kobrin, English Teacher, Half Moon Bay High School, effective August 15, 2018.

2. RESIGNATION

Justin Ferdinand, Resource Specialist, Half Moon Bay High School, effective June 15, 2018.

Sven Gasser, Math/Shop Teacher, Cunha Intermediate School, effective June 15, 2018.

Sierra Plumb, Science/Coding Teacher, Cunha Intermediate School, effective June 15, 2018.

Steve Schultz, Speech/Language Therapist, Multiple Sites, , effective June 15, 2018.

Gayle Smith, Agriculture Teacher, Half Moon Bay High School, effective June 15, 2018.

Ryan Stagg, Physics Teacher, Half Moon Bay High School, effective June 15, 2018.

Pilar Svendsen, Social Studies Teacher, Half Moon Bay High School, effective June 15, 2018.

FINANCIAL IMPACT:

Financial impact is included in the budget.

[redacted]

RECOMMENDATION:

Approve the Certificated Personnel report.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE:	August 9, 2018	☐ **ACTION** ☒ **CONSENT** ☐ **DISCUSSION** ☐ **INFORMATION**
BOARD AGENDA NUMBER:	14.c	
BOARD AGENDA ITEM:	Approve Classified Personnel Report	
DEPARTMENT:	Personnel	
CONTACT PERSON:	Dr. Holly Wade, Assistant Superintendent, Student Support Services Jason Owens, Director of Personnel and Pupil Services	

BACKGROUND INFORMATION:

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

1. OFFER OF EMPLOYMENT FOR 2018-2019

India Polito-Thomas, Clerical Assistant II, Cunha Intermediate School, effective August 1, 2018.

Jacob Rutledge, Custodian II, Hatch Elementary School, effective June 25, 2018.

2. RETIREMENT

Linda Grayson, Paraprofessional Special Education II, Farallone View Elementary School, effective June 14, 2018. Ms. Grayson was hired by the district on September 19, 1980.

3. CHANGE IN ASSIGNMENT

Sara Ahern, 1.0 FTE Campus Security Assistant, Half Moon Bay High School, formerly 0.625 FTE Campus Security Assistant, Half Moon Bay High School, effective August 20, 2018.

James Pendergast, 1.0 FTE Campus Security Assistant, Half Moon Bay High School, formerly 0.625 FTE Campus Security Assistant, Half Moon Bay High School, effective August 20, 2018.

Fernando Ramos, 0.9625 FTE Campus Security Assistant, Cunha Intermediate School, formerly 0.75 FTE Campus Security Assistant, Cunha Intermediate School, effective August 20, 2018.

Heidi Tracy-Perrault, 1.0 FTE Campus Security Assistant, Half Moon Bay High School, formerly 0.75 FTE Campus Security Assistant, Half Moon Bay High School, effective August 20, 2018.

4. PROMOTION

Dante Campagna, Lead Custodian, Maintenance Department, formerly Custodian II, Hatch Elementary School, effective June 1, 2018.

5. REEEMPLOYMENT OF LAID OFF EMPLOYEES FOR 2018-2019

Employee	***Position***	***Site***	***Hrs***	***Days/ Yr***
Lucy Navarro	Clerical Assistant I	Farallone View	2.4	180
Jacqueline Vidrio	Clerical Assistant I	District Office	4	230
Jessica Kim	Administrative Assistant II	La Costa	8	220
Suzanne McCormack	Administrative Assistant II	Cunha	8	222
Dolly Smith	Food Service Assistant I	HMBHS	3.5	180
Lynne Carlton	Library Technician	El Granada	3.5	180
Lynne Carlton	Library Technician	Hatch	3.5	180
Dena Grover	Library Technician	Cunha	7	184
Cecilia Mello	Library Technician	Farallone View	2.5	180
Jill Smith	Library Technician	HMBHS	8	180
Donna McCurdy	Paraprofessional	Kings Mountain	3	180
Julie Pedersen	Paraprofessional	Kings Mountain	3	180
Yudi Haro	Pre-Kindergarten Educator	Los Listos	4	217

FINANCIAL IMPACT:

Financial impact is included in the budget.

RECOMMENDATION:

Approve the Classified Personnel report.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.d

BOARD AGENDA ITEM: Approve the University of San Francisco Student Teaching Agreement

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent, Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

The district is maintaining a student teacher agreement with University of San Francisco in order to participate in their student teaching program.

University of San Francisco operates a program for the education and training of students pursuing a California Preliminary Multiple Subject Teaching Credential and/or Single Subject Teaching Credential with English Learner Authorization (ELA).

The general guidelines for student teachers vary between credential emphasis. During the 2018-2019 school year, students from University of San Francisco will be assigned to the Cabrillo Unified School District.

REPORT/PROPOSAL:

The district proposes the renewal of the existing student teacher agreement between University of San Francisco and the Cabrillo Unified School District. Agreement will be extended through June 30, 2023.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve the University of San Francisco Student Teaching Agreement.

MEMORANDUM OF UNDERSTANDING
AND AGREEMENT TO PROVIDE TEACHING and COUNSELING EXPERIENCE

This Memorandum of Understanding and Agreement to Provide Teaching and Counseling Experience ("Agreement"), is entered into this 11th day of July 2018, by and between the *University of San Francisco* ("University") and the *Cabrillo Unified School District* ("District").

RECITALS

WHEREAS, pursuant to the provisions of the Education Code of the State of California, the governing board of any school district is authorized to enter into agreements with any institution approved by the Commission on Teacher Credentialing as a teacher and counselor education institution to provide teaching or counseling experience to students enrolled in the teacher or counselor training curricula of such institutions; and

WHEREAS, University is approved by the Commission on Teacher Credentialing as a teacher and counselor education institution; and

WHEREAS, any such agreement may provide for the payment in money or in services for the services rendered by the school district in any amount not to exceed the actual cost to the school district of the services rendered; and

WHEREAS, it has been determined between the parties hereto that the value of the services to be rendered to District under this Agreement do not exceed the actual cost to District of the services rendered by District.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, University and District agree as follows:

I. DISTRICT RESPONSIBILITIES

A. District shall provide teaching experience in the schools or classes of District, not to exceed **30** students from University possessing valid certificates of clearance and assigned by University to teach in the schools and classes of District. Such teaching shall be provided in such schools or classes of District, and under the direct supervision, evaluation, and instruction of such employees of District, as District and University, through their duly authorized representatives, may agree upon.

"Teaching" as used herein and elsewhere in this Agreement means active participation in the duties and functions of classroom teaching under the supervision and instruction of employees of District holding valid teaching credentials issued by the State Board of Education and/or the Commission on Teacher Credentialing, other than emergency or provisional credentials, authorizing them to serve as classroom teachers in the schools and classes of District.

The assignment of a student of University to teach in District shall be deemed effective for the purpose of this Agreement as of the date the student presents the assignment letter to District.

B. District shall provide counseling experience in the schools or classes of District, not to exceed **30** students from University possessing valid certificates of clearance and assigned by University to counsel in the schools and classes of District. Such counseling shall be provided in such schools or classes of District, and under the direct supervision and instruction of such employees of District, as District and University, through their duly authorized representatives, may agree upon.

"Counseling" as used herein and elsewhere in this Agreement means active participation in the duties and functions of school counseling under the supervision and instruction of employees of District holding valid PPS credentials issued by the State Board of Education and/or the Commission on Teacher Credentialing, other than emergency or provisional credentials, authorizing them to serve as school counselors in the schools and classes of District.

The assignment of a student of University to counsel in District shall be deemed effective for the purpose of this Agreement as of the date the student presents the assignment letter to District.

C. District may, for good cause, refuse to accept for supervised teaching or counseling any student of University assigned to teach or counsel in District, and upon request of District, made for good cause, University shall terminate the assignment of any student of University to teach or counsel in District.

II. UNIVERSITY RESPONSIBILITIES

A. The assignment of a University student to teach in the schools or classes of District shall be at the discretion of University and shall be for a period of approximately eighteen (18) weeks. University may give students more than one assignment to teach in such schools or classes.

B. The assignment of a University student to counsel in the schools or classes of District shall be at the discretion of the University and shall be for a period of approximately one academic year. University may give students more than one assignment to counsel in such schools or classes.

University agrees that University students receiving counseling experience within District may not displace certificated District employees. University acknowledges that District hiring policies must comply with local teacher union contracts.

III. COMPENSATION FOR MASTER TEACHERS

University will pay District, for the performance by its teachers of all services required to be performed by District under this Agreement, financial compensation for serving as full-time Master Teachers at the rate of two hundred fifty dollars ($250.00) per student for each semester within District, said payment to be distributed among the supervising teacher(s)to whom students of University are assigned. University shall determine the number of semester units of credit for teaching to be provided for each student of University assigned to teach under this Agreement.

If University terminates the assignment of a student to teach in the schools or classes of District, District shall receive payment of an amount for such student as though there had been no termination of the assignment, except that if such assignment is terminated before the end of the eighth week of the term of the assignment, District shall receive payment for an assignment for nine (9) weeks only.

Within a reasonable time following the close of each semester of the University of San Francisco, the University shall submit and process an invoice, in duplicate, for payment, for all supervised teaching under and in accordance with this agreement during said semester.

IV. INDEMNITY

University and District agree to defend, indemnify and hold one another, their respective officers, employees, students and agents harmless from and against all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result of negligent or intentional acts or omissions of the indemnifying party, its officers, employees, students or agents.

V. DISTRICT AND UNIVERSITY INSURANCE

District and University each agree to keep in full force and effect, during the term of this Agreement, insurance to meet their respective obligations and liabilities hereunder and such insurance shall include but not be limited to the following:

Commercial General Liability and Auto Liability with limits of not less than $1,000,000 per occurrence, and $3,000,000 in the aggregate, for bodily injury, personal injury and property damage, endorsed to name the other party to the contract as additional insured;

Workers' Compensation coverage with statutory limits; and

Employers Liability coverage with limits of not less than $1,000,000 per occurrence, and $3,000,000 in the aggregate.

Each insurance policy required above shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party, except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the other party to this Agreement.

Upon request, District and University shall each cause to be issued to the other evidence of such insurance prior to the commencement of this Agreement and annually thereafter.

VI. DISPUTES

In the event that a dispute arises between the parties with regard to the rights or duties created by this Agreement, or in the event of a breach of this Agreement by either party, the parties hereto agree to meet and confer in good faith in an effort to resolve the dispute or issue.

In the event the parties are unable to informally resolve the dispute within thirty (30) days after the dispute has arisen, the parties agree to decide whether to attempt to settle the dispute through arbitration or litigation. In order to send a dispute to arbitration, both parties must agree in writing that arbitration is their chosen method of resolving the dispute in question.

VII. GENERAL PROVISIONS

A. Term of Agreement. The term of this Agreement shall commence on the *11th* day of *July 2018* and shall terminate on the *30th* day of *June 2023.*

B. Termination. This Agreement may be terminated by either party without cause upon thirty (30) days prior written notice; provided, however, that any such termination by District shall not be effective as to any student who at the date of mailing of the notice by District was receiving teaching or counseling experience within District until the student has completed his or her assignment, except at the election of University.

C. Entire Agreement; Modification. This Agreement contains all the terms between the parties and may be modified only in writing signed by both parties.

D. Applicable Law. The terms and conditions of this Agreement shall be interpreted in accordance with the laws of the State of California.

E. Severability. In the event any court of competent jurisdiction determines that any paragraph or subparagraph of this Agreement is invalid or unenforceable for any reason, all remaining paragraphs or subparagraphs shall remain in full force and effect.

F. Confidentiality. Both parties shall protect the confidentiality of each others records and information, and shall not disclose confidential information without the prior written consent of the other party. University agrees to comply with District policy and procedure related to patient confidentiality.

G. Notices. Any notice to either party hereunder must be in writing signed by the party giving notice, and shall be served either personally or by registered or certified mail addressed as follows:

To University:

Dean Shabnam Koirala-Azad
USF School of Education
2130 Fulton Street
San Francisco, CA 94117

With a copy to:

General Counsel
University of San Francisco
101 Howard Street, Suite 200
San Francisco, CA 94105

To District:

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

H. Non-Discrimination. The parties agree not to discriminate in employment, academic programs, or the provision of services on the basis of an individual's race, color, religion, religious creed, ancestry, national origin, age (except minors), sex, sexual orientation, marital status, medical condition (cancer-related) or disability and otherwise as required or permitted by law.

I. Status of the Parties. It is expressly understood and agreed that this Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association between University and District; rather it is an affiliation between independent contractors, these being University and District.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto, the day and year first above written.

University of San Francisco

[redacted]

By: _____
Shirley McGuire, Ph.D.

Senior Vice Provost
Title

7/16/18
Date

Cabrillo Unified School District

By: _____
Name (Signature)

_____
Name (Print)

_____
Title

_____
Date

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.e

BOARD AGENDA ITEM: Approve the San Jose State University Student Teaching Agreement

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent, Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

The district is maintaining a student teacher agreement with San Jose State University in order to participate in their student teaching program.

San Jose State University operates a program for the education and training of students pursuing a California Preliminary Multiple Subject Teaching Credential and/or Single Subject Teaching Credential with English Learner Authorization (ELA) or a Speech/Language Pathology credential (i.e., credential candidates).

The general guidelines for student teachers vary between credential emphasis. During the 2018-2019 school year, students from San Jose State University will be assigned to the Cabrillo Unified School District.

REPORT/PROPOSAL:

The district proposes the renewal of the existing student teacher agreement between San Jose State University and the Cabrillo Unified School District. Agreement will be extended through June 30, 2023.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve the San Jose State University Student Teaching Agreement.

STUDENT TEACHING AGREEMENT

THIS AGREEMENT entered into by and between the State of California through the Trustees of The California State University on behalf of the State University, noted below, all of which are hereinafter called State or State University, and the Center, noted below, hereinafter called the Center:

WITNESSETH

WHEREAS, The Center is authorized to enter into agreements with the State, to provide teaching experience through practice teaching to students enrolled in teacher training curricula of the State University; and to provide speech and language pathology experience through practice speech and language pathology to students enrolled in speech and language pathology training curricula of the State University; and

WHEREAS, any such agreement may provide for the payment for the services rendered by the Center of an amount not to exceed the actual costs to the Center of the services rendered; and

WHEREAS, it has been determined between the parties hereto that the payments to be made to the Center under this agreement do not exceed the actual cost to the center of the services rendered by the Center, and

WHEREAS, the honorarium or payment provided herein is intended to be transmitted promptly by the Center to the supervising teacher as compensation for and recognition to services performed for the student teacher in the supervisory teacher's charge;

NOW THEREFORE, it is mutually agreed between the State and the Center as follows:

SPECIAL PROVISIONS

The State University and the Center are as follows:

UNIVERSITY:	Center:
San Jose State University	**Cabrillo Unified School District**
One Washington Square	**498 Kelly Ave**
San Jose, CA 95192-0071	**Half Moon Bay, CA94019**

The TERM of the Agreement is **July 1, 2018 through June 30, 2023.**

The State shall pay Center for such services at the RATE AND AMOUNT of $16.67 per quarter unit, and $25.00 per semester unit.

GENERAL TERMS

1. The Center shall provide to State University students teaching experience through practice teaching in schools and classes of the Center not to exceed the units of practice teaching set forth in the Special Provisions. Such practice teaching shall be provided in such school or classes of the Center, and under the direct supervision and instruction of such employees of the Center, as the Center and the State through their duty-authorized representatives may agree upon.

The Center may, for good cause, refuse to accept for practice teaching any student of the State University assigned to practice teaching in the Center, and upon request of the Center, made for good cause, the State shall terminate the assignment of any student of the State University to practice teaching in the Center.

"Practice teaching" as used herein and elsewhere in this agreement means active participation in the duties and functions of classroom teaching under the direct supervision and instruction of employees of the Center holding valid life diplomas or credentials issued by the State Board of Education, other than emergency or provisional credentials, authorizing them to serve as classroom teachers in the schools or classes in which the practice teaching is provided.

2. The State will pay the Center for the performance by the Center of all services required to be performed under this agreement at the rates set forth in the Special Provisions for each semester or quarter unit of practice teaching.

A semester unit of practice teaching for elementary and secondary schools is approximately twenty (20) minutes of practice teaching daily for five (5) days a week for eighteen (18) weeks. A quarter unit of practice teaching is two-thirds (2/3) of a semester unit. For community colleges and/or adult schools, a semester unit is approximately 20 minutes of practice teaching daily three (3) days a week for eighteen (18) weeks during the regular season.

3. An assignment of a student of the State University to practice teaching in schools or classes of the Center shall be, at the discretion of the State, either for approximately nine (9) weeks or for approximately (18) weeks, but a student may be given more than one assignment by the State University to practice teaching in such schools or classes.

The assignment of a student of the State University to practice teaching in the Center shall be deemed to be effective for purposes of this agreement as of the date the student presents to the proper authorities of the Center the assignment card or other document given the student by the State University effecting such assignment, but not earlier than the date of such assignment as shown on such card or other document.

In the event the assignment of a student of the State University to practice teaching is terminated by the State University for any reason, the Center shall receive payment on account of such student except that if such assignment is terminated before the end of the ninth week of the term of the assignment, the Center shall receive payment for an assignment for nine (9) weeks only. If a student is assigned by the State University to another teacher of the Center after an assignment has become effective, this shall be considered for payment purposes as an entirely new and separate assignment.

Absences of a student from assigned practice teaching shall not be counted as absences in computing the semester units of practice teaching provided the student by the Center.

4. Within a reasonable time following the close of each semester or quarter of the State University, the Center shall submit an invoice, in duplicate, to the State University for payment, at the rate provided herein, for all units of practice teaching provided by the Center under and in accordance with this agreement during said semester or quarter. The Center shall attach to the invoice a certificate, in duplicate, executed by a duly authorized representative of the Center certifying that the Center expended or became obligated to expend in providing such practice teaching in an amount not less than the amount of the invoice. The State will pay the amount of such invoice from moneys made available for such purpose by or pursuant to the laws of the State.

5. Notwithstanding any other provisions of this agreement, the State shall not be obligated by this agreement to pay the Center any amount in excess of the total sum set forth in the Special Provisions.

HOLD HARMLESS CLAUSE

The Center and the State University will save harmless and indemnify the State and Center against all claims, demands, suits, judgments, expense and costs of any and every kind, insofar as it may legally do so and subject to the availability of funds, on account of the injury to or death of persons or loss of or damage to property arising in any manner out of Center's or State's performance of the terms of this Agreement.

INSURANCE

State and Center will procure and maintain in full force and effect adequate insurance or will self-insure their obligations under this Agreement.

Pursuant to the California State University (CSU) policy for contracting and procurement (Section 412.06), the University must ask for the following insurance information to be provided prior to issuance of an agreement, purchase order or student placement agreement/commitment which allows the work to be performed:

Contracts requiring insurance coverage shall contain the following provisions:

1. Center shall furnish to the University a Certificate of Insurance stating that there is liability insurance presently in effect for the agreement with a single limit of not less than $1,000,000 per occurrence, and $2,000,000 aggregate; and that vehicle insurance (where applicable) is in effect with a minimum coverage of $1,000,000 per occurrence.

2. The Certificate of Insurance shall provide:

    a. That the insurer will not cancel the insured's coverage without thirty (30) days prior notice to the University;

    b. The State of California, the Trustees of the California State University System, San Jose State University, and the employees, officers, and agents of each of them, must be added by endorsement as Additional Insured, but only insofar as the operations under the agreement are concerned.

    c. That the State, the Trustees, and the University, and the employees, officers and agents of each of them will not be responsible for any premiums or assessments on the policy.

3. The Center agrees that the bodily injury liability insurance herein provided shall be in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this contract/agreement, Center aggress to provide at least thirty (30) days prior to said expiration date, a new Certificate of Insurance will be provided evidencing insurance coverage for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to approval of the University, and Center agrees that no services shall be performed prior to the giving of such approval.

In the event that the Center fails to keep in effect at all time insurance

coverage as provided herein, the University may in addition to any other remedies it may have, terminate the contact/agreement upon occurrence of such event.

4. Workers Compensation and Employer's Liability insurance coverage as required by California State Law shall be maintained by the Center and any subcontractor(s) through the completion of the service. It is agreed that the University will provide Workers' Compensation coverage for students for the duration of this agreement.

The limit of coverages set forth above is a minimum amount, and any situation where an unusually high risk of liability is present, the University may require the Center to carry insurance with a higher limit.

STATE OF CALIFORNIA	CENTER
Trustees of the California State University	Cabrillo Unified School District
BY: _____ Date: _____	BY: _____ Date: _____
TITLE: SJSU Contract Analyst	TITLE: _____

THIS SECTION IS OPTIONAL:

CERTIFICATION

I, the duly appointed and acting Clerk or Secretary of the Governing Board of the Center listed below, do hereby certify that the following is a true and exact copy of a portion of the Minutes of the regular meeting of said Board held on _____.

"It was moved, seconded, and carried that the attached contract with the Trustees of The California State University, whereby the University may assign students to the schools in the Center for practice teaching, be approved; and the _____ is hereby authorized to execute the same."

BY _____
Clerk, Secretary (strike one) of the governing Board of The Center

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.f

BOARD AGENDA ITEM: Approve the University of Southern California Student Teaching Agreement

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent of Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

The district is engaging in a student teacher agreement with the University of Southern California in order to participate in their student teaching program.

University of Southern California operates a program for the education and training of students pursuing a California Preliminary Multiple Subject Teaching Credential and/or Single Subject Teaching Credential with English Learner Authorization (ELA) or a Speech/Language Pathology credential (i.e., credential candidates).

The general guidelines for student teachers vary between credential emphasis. During the 2018-2019 school year, students from the University of Southern California will be assigned to the Cabrillo Unified School District.

REPORT/PROPOSAL:

The district proposes the initiation of a student teacher agreement between the University of Southern California and the Cabrillo Unified School District. Agreement will extend through June 30, 2020.

FINANCIAL IMPACT:

There is no financial impact on the district for this agreement.

RECOMMENDATION:

Approve the University of Southern California Student Teaching Agreement.

AGREEMENT

This Agreement is made this 10th day of August, 2018, by and between Cabrillo Unified School District, with an address located at 498 Kelly Ave., Half Moon Bay, CA 94019 ("School" or "District"), the University of Southern California, a California nonprofit educational institution, with an address of Waite Phillips Hall, 3470 Trousdale Parkway, Los Angeles, CA 90089 ("USC") and 2U, Inc., a Delaware corporation with an address located at 8201 Corporate Drive, Suite 900, Landover MD 20785 ("2U"), acting on behalf of USC.

WHEREAS, USC offers masters degree programs to its students in classroom and in online learning environments; and

WHEREAS, with respect to the online learning environment, 2U supplies the technology platform that enables delivery of the USC Rossier Online programs, facilitates online student and faculty interaction, and provides other support services to USC; and

WHEREAS, USC may fulfill its obligations set forth below with respect to the online program through 2U and 2U's provision of support services to USC;

NOW THEREFORE, intending to be legally bound hereby, the parties agree as follows:

1. Placements. The School/District agrees to host one or more teacher candidates as Observation Students, Research Students and/or Student Teachers. The School/District shall facilitate opportunities for Observation Students and Research Students to observe School/District students, and/or Student Teachers to teach well-planned lessons mediated by Guiding Teachers (defined below), all to occur during the School's/District's operating hours. Opportunities may also include interviewing teachers, school leaders, students and other members of the school community.

2. Placement Opportunities.

(a) USC will request placements for its students. Each request shall identify the particular student (or, for groups of students, a composite description of relevant background, assignment request, assignment objectives and suggested activities as appropriate to requested assignments for the student group). USC shall comply with any School/District policy applicable to such placement requests and provided by the School/District to USC (including through 2U).

(b) USC shall identify prospective Observation Students to the School/District for potential placement (*e.g.*, recess observation, lunchtime interactions, interactions with parents/teachers, etc.) within the School/District including assignment to a teacher of record. USC shall supply the prospect's name, relevant program and background clearance information and type of assignment appropriately matching the prospect's needs. Notwithstanding the foregoing, the School/District shall at all times have discretion over the maximum number of students it shall accept as Observation Students, the length of assignments, and the distribution of assignments.

(c) USC shall identify prospective Research Students to the School/District for potential placement (*e.g.*, case study, classroom observation with student interaction, lesson delivery as part of fieldwork, etc.) within the School/District including assignment to a teacher of record. USC shall supply the prospect's name, relevant program and background clearance information and type of assignment appropriately matching the prospect's needs. Notwithstanding the foregoing, the School/District shall at all times have discretion over the maximum number of students it shall accept as Observation Students, the length of assignments, and the distribution of assignments.

(d) USC shall identify prospective Student Teachers to the School/District for potential placement (*i.e.*, "Guided Practice") within the School/District. USC shall supply the prospect's name, relevant background information and type of assignment appropriately matching the prospect's needs; and, in conjunction with the School/District as set forth in Section 3(a) below, recommend School/District teachers to be Guiding Teachers (as defined below) for such Student Teacher prospects. Notwithstanding the foregoing, the School/District shall at all times have discretion over the maximum number of students it shall accept as Student Teachers, the length of assignments, and the distribution of assignments.

(e) The School/District agrees to use good-faith efforts to place teacher candidates proposed by USC within the School/District. The School/District shall have the sole discretion with respect to all Observation Student, Research Student, and/or Student Teacher assignments hereunder, provided that the School/District shall involve USC throughout the decision-making process. The School/District shall not in any way be obligated to accept assignments of teacher candidates beyond the capabilities of the School/District, as determined by the School/District in its sole discretion. The School/District shall have the right to terminate its relationship with any teacher candidate for violation of the School's/District's regulations or for other reasonable cause in accordance with the School's/District's standard policies or practice.

3. Guiding Teachers.

(a) The School/District shall make recommendations to USC regarding teachers whom it believes are appropriate to serve as Guiding Teachers (defined below). Through the School's/District's recommendations, USC's observations and Student Teacher reference, USC shall identify teachers working within the School/District to supervise and prepare Student Teachers during their student teaching experiences ("Guiding Teacher").

(b) Both the School/District and USC shall approve the participation of any teacher as a Guiding Teacher, provided that the School/District shall use its best efforts to approve a sufficient quantity of Guiding Teachers necessary to oversee the agreed-upon number of Student Teachers placed within the School/District at any time.

(c) Should any Guiding Teacher become unable to perform or fulfill his or her duties hereunder, the School/District shall assign an alternative Guiding Teacher to the teacher candidate (excluding a substitute teacher that replaces the original Guiding Teacher within the School/District).

4. Compliance.

(a) *Background Investigations*. (i) USC shall ensure that all Student Teachers being hosted by the School/District have completed a background check and received appropriate clearance(s) prior to commencing any assignment as a Student Teacher at the School/District. (ii) The School/District may impose requirements upon teacher candidates in addition to those referenced in Section 4(a)(i) above (the "Additional Requirements"). In such event, the School/District agrees to provide all such Additional Requirements in writing to USC promptly following execution of this Agreement (or, as applicable, promptly upon any adoption or modification thereof occurring during the Term of this Agreement). USC shall communicate all such Additional Requirements to teacher candidates, and shall advise teacher candidates to make any and all additional required submissions directly to the School/District. Upon notice to the teacher candidate, the School/District shall have the right to reject any teacher candidate who fails to comply with the Additional Requirements from participating in an assignment at the School/District.

(b) *Credential Seeking Candidates.* Any credential seeking USC Student Teacher shall be required to sit for and pass applicable, state-specific, subject-specific exams prior to the commencement of his or her assignment as a Student Teacher.

5. Honorarium.

(a) Upon each Student Teacher's completion of his or her guided learning assignment, USC or 2U shall pay an honorarium of $350.00 directly to each Guiding Teacher for his or her participation in a Student Teacher's guided learning assignment. The School/District agrees that USC/2U (as applicable) may require Guiding Teachers to submit reasonable documentation to USC/2U (as applicable) prior to USC/2U (as applicable) making payments hereunder.

(b) USC and 2U shall comply with any School/District policy requiring that the School/District, and not third parties, make Guiding Teacher payments to Guiding Teachers. In such event, the School/District may require USC/2U (as applicable) to make Guiding Teacher payments to the School/District for distribution by the School/District to Guiding Teachers, provided that the School/District shall first invoice USC/2U (as applicable) for any such payment(s). For the avoidance of doubt, in the event that USC/2U makes Guiding Teacher payments to the School/District in accordance with this Section 5(b), Section 5(a) above shall be deemed stricken from this Agreement with respect thereto.

(c) Should any Guiding Teacher fail to complete his or her assignment hereunder (either due to such teacher's own circumstances or due to USC's removal of the teacher as a Guiding Teacher), USC/2U (as applicable) shall pay the corresponding honorarium on a pro rata basis.

(d) USC and 2U shall comply with any written School/District policy or procedure contrary to this Section 5, provided that the School/District shall provide any copy/copies thereof upon execution of this Agreement or subsequent adoption thereof.

6. Use of Video. USC utilizes video recording pervasively throughout its programs, including as an essential element of its instruction methodology. (By way of example only, the State of California requires USC to administer a Teaching Performance Assessment ("TPA") of its students as part of USC's teacher preparation program, with a component of that TPA being video that USC must obtain from each Student Teacher and maintain on file with the California Commission on Teacher Credentialing.) As such, any teacher candidate may make video recordings as part of his or her program studies throughout his or her assignment at the School/District. USC shall require teacher candidates to be responsible for obtaining appropriate and signed video release/authorization forms (which USC shall provide to teacher candidates) on behalf of recorded individuals, as appropriate, including obtaining parent/guardian signatures on behalf of recorded individuals who are minors (*i.e.*, under the age of legal competence). The School/District may provide reasonable assistance to teacher candidates in obtaining signatures on such forms.

7. No Employment Relationship of Teacher Candidates.

(a) Teacher candidates are students, and not employees of USC, 2U or the School/District. As such, they are not covered by USC's, 2U's or the School's/District's workers' compensation policies.

(b) Teacher candidates are neither entitled to, nor shall receive, any compensation or other employee-related benefit (without limitation) from USC, 2U or the School/District. Teacher candidates shall not displace any School/District employee.

(c) The School/District shall provide in writing any requirements for teacher candidates to obtain and maintain personal liability insurance coverage. USC shall communicate to teacher candidates any such School/District coverage requirements, provide reasonable assistance to teacher candidates in obtaining such coverage,

and facilitate teacher candidate's submission of appropriate documentation thereof directly to the School/District (which the School/District agrees to accept).

8. Information, Hiring & Confidentiality.

(a) USC is a non-profit, educational research institution interested in evaluating the success of its graduates in impacting student achievement relative to comparable teachers. As such, USC may request the School/District to provide information to assist USC in its evaluative process. If available, the School/District shall provide such information to USC following any such reasonable request.

(b) The School/District may hire any teacher candidate(s) upon program completion, but is under no obligation to do so. Should the School/District hire any teacher candidate(s), the School/District shall support USC's program evaluation initiatives by sharing student-level performance data for students he or she teaches to measure teacher efficiency relative to other Master of Arts in Teaching graduates and to other new teachers prepared through other pathways. USC shall keep such data confidential and use it only to facilitate analysis of its effectiveness, and will share its findings with the School/District. This paragraph 8(b) shall survive the expiration or termination of this Agreement for any reason.

(c) Neither USC nor 2U shall request the School/District to provide any health or other records of any student of the School/District covered by the Family Educational Rights and Privacy Act ("FERPA"); nor shall USC or 2U request any teacher candidate to share any protected School/District data (whether about School/District students or personnel) with USC or 2U.

(d) To the extent that any party to this Agreement discloses any confidential information to any other party hereto in connection with the relationships contemplated hereunder, the parties agree during the term of this Agreement (and all renewals thereof) and for a period of two (2) years thereafter to use reasonable efforts to protect, maintain as confidential, and not disclose, any such confidential information of any other party.

9. Compliance with the Law. The parties hereto shall comply with all applicable federal, state and local laws, rules, statutes, acts, regulations, code and similar legal requirements, including but not limited to FERPA.

10. Non-Discrimination. Each party represents that it is an equal opportunity employer. Each party certifies that it does not, and shall not, discriminate against its employees, students or applicants on any unlawful basis. Each party certifies that it is, and shall remain, in compliance with all laws, regulations, executive orders or other legal prohibitions against discrimination.

11. Indemnification.

(a) *Indemnification by School/District*. The School/District shall indemnify, defend and hold harmless USC and 2U, their employees, agents and representatives, from all claims, actions, awards or judgments for damages, including costs, expenses and attorneys' fees, where liability is found to exist by reason of the acts or omissions of the School/District, its employees, agents or representatives.

(b) *Indemnification by USC*. USC shall indemnify, defend and hold harmless the School/District, its employees, agents and representatives, from all claims, actions, awards or judgments for damages, including costs, expenses and attorneys' fees, where liability is found to exist by reason of the acts or omissions of USC, its employees, agents or representatives.

(c) *Indemnification by 2U*. 2U shall indemnify, defend and hold harmless the School/District, its employees, agents and representatives, from all claims, actions, awards or judgments for damages, including costs, expenses and attorneys' fees, where liability is found to exist by reason of the acts or omissions of 2U, its employees, agents or representatives.

12. Governing Law. The interpretation, application, and enforcement of this Agreement shall be governed by the laws of the State of California without reference to choice of law principles. Any claim, suit, or cause of action involving the interpretation, application, or enforcement of this Agreement shall be commenced in the appropriate state or federal courts in the State of California.

13. Term, Termination and Renewal. The Term of this Agreement shall be from the date of the School's/District's signature set forth below through June 30, 2020. Unless any party terminates this Agreement pursuant to this Section 13, this Agreement shall automatically renew for successive one (1) year periods beginning each July 1st thereafter. Any party may terminate this Agreement with or without cause upon written notice to the other parties, provided that any such termination shall only be effective after the end of the school year during which the written notice of termination is issued. For the avoidance of doubt, other than where the School/District removes a teacher candidate pursuant to Section 2(e) above, the School/District shall permit current teacher candidates to complete the current school year at the time of any such termination.

14. Notices. Any notice to be given hereunder by any party to this Agreement shall be in writing and will be deemed given on the date received as evidenced by confirmation of receipt, except if such confirmation is later than 3:00 p.m. (School/District local time), addressed as follows (provided that, upon written notice in accordance herewith, any party may update its notice recipients at any time during the term of this Agreement):

(a) *If to the School/District*: Cabrillo Unified School District, 498 Kelly Ave., Half Moon Bay, CA 94019 attention: Jason Owens, Director of Personnel and Pupil Services; facsimile No. (650) 726-0279.

(b) *If to USC*: University of Southern California, Rossier School of Education, Waite Phillips Hall, 3470 Trousdale Parkway, WPH-504G, Los Angeles, CA 90089; attention: Dr. Kathy Stowe, Associate Dean of Academic Programs; Facsimile No. (213) 740-5799.

(c) *If to 2U*: 2U, Inc., attention: Office of the General Counsel, attention: General Counsel, 2U, Inc.; 8201 Corporate Drive, Suite 900; Landover, MD 20785; Facsimile No. (240) 667-7844; *with a copy to*: Skadden, Arps, Slate, Meagher & Flom LLP, attention: Steven J. Daniels, Esq.; 920 N. King Street, Wilmington, DE 19801; Facsimile No. (302) 552-3240.

15. Limitation of Liability. Except as such damages may be sought or assessed in respect to third party actions covered by the indemnification provisions herein, no party shall be liable to the other for consequential, incidental, indirect, exemplary, punitive or special damages of any nature or character (including loss of profits, data, business or goodwill), from causes of action of any kind, including contract, tort or otherwise, even if the party at fault or in breach has been advised of the possibility of such damages.

16. Severability. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties to this Agreement, such provision will be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and the remaining terms, provisions, covenants, and restrictions of this Agreement will remain in full force and effect.

17. Entire Agreement/No Modification/Counterparts/Execution/Binding Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by all parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all of the Parties reflected hereon as the signatories. A faxed, PDF or electronic signature shall have the same legally binding effect as an original signature. This Agreement will be binding upon the parties and their successors, affiliates, subsidiaries, assigns, officers, directors, employees, and agents.

18. Waiver of Jury Trial. The parties hereby irrevocably and unconditionally waive any right(s) to trial by jury in any action or proceeding arising out of, in connection with or relating to this Agreement.

INTENDING TO BE LEGALLY BOUND HEREBY, the parties affix their respective hands below:

CABRILLO UNIFIED SCHOOL DISTRICT **498 KELLY AVE.** **HALF MOON BAY,CA 94019**	**UNIVERSITY OF SOUTHERN CALIFORNIA, ON BEHALF OF THE ROSSIER SCHOOL OF EDUCATION**	**2U, INC.**
Print Name: _____	**Print Name:** _____	**Print Name:** _____
Signature: _____	**Signature:** _____	**Signature:** _____
Dated: _____	**Dated:** _____	**Dated:** _____

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14. g

BOARD AGENDA ITEM: Approve Change in Workdays for Behavior Intervention Specialist Position

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent of Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

Due to an increase in the demand for services and support provided through the Behavior Intervention Specialist position, it is recommended that the work calendar for this position should be increased from the previous 215 workdays to 243 days, making this position a 12-month assignment.

REPORT/PROPOSAL:

Increase the workdays for the Behavior Intervention Specialist position from 215 to 243 work-days.

FINANCIAL IMPACT:

The additional cost to the General Fund for this change will be approximately $11,155.00.

RECOMMENDATION:

Approve change in workdays for Behavior Intervention Specialist position.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.h

BOARD AGENDA ITEM: Approve Behavior Intervention Coordinator Job Description

DEPARTMENT: Personnel

CONTACT PERSON: Dr. Holly Wade, Assistant Superintendent of Student Support Services
Jason Owens, Director of Personnel and Pupil Services

BACKGROUND INFORMATION:

Members of the Behavior and Education Services Team (BEST) provide direct support to school staff to enhance the delivery of services using ABA methodologies, including the development and implementation of individualized instructional curricula and behavioral programs, resulting in improved student outcomes and continued inclusion with their peers. BEST also helps to provide classroom and school-wide behavior support strategies when requested by school staff, administrators, parents, or other stakeholders. BEST serves as coaches for Multi-Tiered Systems of Support

The Behavior Intervention Coordinator (BIC) is a Master's Degree-level Case Supervisor that is accountable to the BEST Program Manager. It is the responsibility of the BIC to participate in development and maintenance of behavior services as they relate to the care and treatment of students along with designing interventions, providing case supervision, coaching staff and conducting student observations and collecting data for analysis.

REPORT/PROPOSAL:

The Behavior Intervention Coordinator plays a crucial role in the administration of behavioral services and development of individualized instructional curricula used to improve academic success within the district's student population.

FINANCIAL IMPACT:

The impact to the General Fund will be between $55,697.00 and $62,724.00

RECOMMENDATION:

Approve Behavior Intervention Coordinator Job Description.

CABRILLO UNIFIED SCHOOL DISTRICT

CLASS TITLE: BEHAVIOR INTERVENTION COORDINATOR

BASIC FUNCTION:

Under the direction of the District Behavior Services Manager, the Behavior Intervention Coordinator provides behavior instruction/therapy with the overarching goal of increasing students' access to their education. This supervisory role is intended to design, implement, and monitor behavior support strategies in the educational milieu. The Behavior Intervention Coordinator will work closely with the administration, staff, specialists, and the students' families to ensure the optimal development of each student.

REPRESENTATIVE DUTIES:

ESSENTIAL DUTIES:

- Develop, implement, and supervise implementation of appropriate behavior intervention plans based on BCBA assessment.
- Ensure that the strategies are tailored for each student, working with the parents, other specialists, and School Psychologist to understand the student's underlying needs and issues.
- Attend IEP meetings, as needed.
- Develop performance metrics for students' IEPs.
- Collaborate with case managers and members of the IEP team regarding the students' programming and progress. Prepare quarterly individual student achievement reports to report on progress to parents and administration.
- Design forms for data collection and progress monitoring. Collect, maintain, and review data for progress reports to assist students in meeting their IEP goals.
- Document/gather information on student behavior through direct and indirect data collection and charting.
- Analyze educational curriculum for appropriate individualized modification of materials and learning actives to meet student ability.
- Communicate case related barriers/concerns and report progress to BCBA supervisor.
- Respond to crisis/emergency situations.
- Consult and collaborate with school personnel, parents, and representatives of community services or agencies, as necessary, on student behavior and progress.
- Provide individual and group training for staff on various topics.
- Provide case supervision for Behavior Technicians (BTs), including individual observation and consultation with BTs for purposes of training and maintenance of service quality.
- Present oneself as an integral member of the educational team: lead by example; contribute to an expectation of excellence; motivate fellow employees to maintain best efforts and produce their best work; take the initiative to research new programs/policies/ideas/events; and cultivate a contagious enthusiasm for our mission.
- Effectively communicate to staff, parents, students, other service providers, and community members in a way that models teamwork, encourages cooperative interaction among employees, supports collaboration, and promotes a high level of open and honest communication.
- Express oneself clearly and confidently orally and in writing.
- Speak publicly in an effective manner in order to represent the District at community events.
- Act as an ambassador to the Cabrillo Unified School District and uphold a standard of excellence and professionalism in all interactions with parents, prospective parents, and other community members, whether representing the school or in private interactions.
- Maintain a workable level of organization and preparation for the classroom as well as for meetings, presentations, and events.

OTHER DUTIES:

- Perform related duties as assigned

KNOWLEDGE AND ABILITIES:

KNOWLEDGE OF:

- Applied Behavior Analysis (ABA) principles, procedures, and ethics
- Knowledge of educationally-based methodologies such as Discrete Trail Training (DTT), Pivotal Response Training (PRT), Picture Exchange Communication Systems (PECS), Treatment and Education of Autistic and related Communications Handicapped Children (TEACCH), Natural Environment Teaching (NET) and Incidental Teaching techniques
- Milestones of child development and how to appropriately accommodate students based on their developmental level
- Behavior intervention strategies and techniques based on function of behavior
- Demonstrated effectiveness as a behavior specialist
- Knowledge of social-emotional learning, executive functioning, and characteristics of diagnoses such as Autism Spectrum Disorders (ASD) and ADHD

ABILITIES:

- An unflappable ability to stay calm and focused in the face of challenging behaviors.
- An ability to think quickly on one's feet to analyze the possible cause and function of student behavior and the best intervention in the moment.
- A willingness and ability to learn new behavior intervention methods to supplement own techniques.
- An ability to provide tactful feedback in a constructive and courteous manner, and to receive feedback with thoughtfulness and consideration.
- A sense of humor, genuine love for children, and deep appreciation for our students.
- An ability to make a genuine connection with each student.
- A belief that all youngsters have the natural ability to succeed at high levels of learning and it is the behaviors and actions of the adults in the School that nurture, develop, and encourage each and every student.
- An ability to build caring and considerate relationships that demonstrate regard and respect for all people.
- A belief that decisions should be made from the perspective of putting students' needs first.
- An ability to resolve student problems and make decisions based on developmental appropriateness, educational research, and an understanding of the issues underlying an individual student's behavior.
- An ability to get along well with other members of staff. To organize and provide leadership as well as participate as a team member
- An ability to conduct oneself in a way that maintains the integrity of the position and the District.
- An ability to adhere to professional codes of ethics: maintain trust and confidentiality; model legally and morally responsible actions at all times; treat individuals with fairness, dignity, and respect; and model the core values of the School.

EDUCATION AND EXPERIENCE:

- Bachelor's Degree in Education, Psychology, or related field, **plus** a minimum 9 credit hours completed towards a Master's Degree in ABA
- 3+ years of experience as a Behavior Specialist in school settings, with 1+ years in a lead/supervising role

PREFERRED EDUCATION AND EXPERIENCE:

- BCaBA or Master's Degree in ABA, Education, Psychology, or related field
- 5+ years of experience as a Behavior Specialist in school settings, with 2+ years in a lead/supervising role

OTHER DESIRED SKILLS:

- First Aid and CPR

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.

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.i

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	**$23,750**
Scholarship	
The Brewery on Half Moon Bay Inc.	$1,000
Rebekkah Assembly of California, Independent Order of Odd Fellows	$1,000
Cabrillo Education Foundation, Coastside Futures	$21,000
Sports	
Carrie Fisher, Raymond Fisher	$150
Jodi Miller	$150
Seth Gorman	$150
Brett Bowers, Elginia Bowers	$300

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: August 9, 2018

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

BOARD AGENDA NUMBER: 14.j

BOARD AGENDA ITEM: Accept Enrollment Report:
Tenth Month 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 tenth 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 District.

RECOMMENDATION:

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

CABRILLO UNIFIED SCHOOL DISTRICT
2017-2018 SCHOOL YEAR
ENROLLMENT REPORT

School Month No. **10** **Date:** **6/14/2018**

Grade	El Granada	Farallone View	Hatch	Kings Mountain	Cunha	Half Moon Bay High	Pilarcitos	Home & Independent Study	TOTALS
TK	18	16	17	0	-	-	-	0	51
K	71	58	77	13	-	-	-	0	219
1	49	52	93	10	-	-	-	0	204
2	56	48	100	11	-	-	-	0	215
3	64	47	97	12	-	-	-	0	220
4	71	47	108	13	-	-	-	0	239
5	57	54	87	12	-	-	-	0	210
6	-	-	-	-	256	-	-	0	256
7	-	-	-	-	257	-	-	0	257
8	-	-	-	-	259	-	-	2	261
9	-	-	-	-	-	250	0	3	253
10	-	-	-	-	-	247	6	2	255
11	-	-	-	-	-	210	13	10	233
12	-	-	-	-	-	234	17	11	262
Total Regular Enrollment	386	322	579	71	772	941	36	28	3135
SDC Student Enrollment	23	0	0	0	19	14	0	0	56
TOTAL ENROLLMENT	**409**	**322**	**579**	**71**	**791**	**955**	**36**	**28**	**3191**
Total Enrollment as of 6/15/17	424	315	611	67	786	939	36	29	3207
Difference between 6/15/2017 Total Enrollment and 6/14/2018 Total Enrollment	**-15**	**7**	**-32**	**4**	**5**	**16**	**0**	**-1**	**-16**
Total Enrollment as of 6/1/18	409	322	580	71	791	955	37	27	3192
Difference between 6/1/18 Total Enrollment and 6/14/18 Total Enrollment	**0**	**0**	**-1**	**0**	**0**	**0**	**-1**	**1**	**-1**

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.k

BOARD AGENDA ITEM: Approve Quarterly Report on Williams Uniform Complaints (Education Code §35186)

DEPARTMENT: Superintendent/Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND:

In May 2000, the American Civil Liberties Union (ACLU) and other public interest groups filed a lawsuit against the State of California alleging the state had failed to provide poor and underprivileged students with equal educational opportunities by providing these students with inadequate facilities, insufficient educational materials, and with teachers who were not fully credentialed. This requirement only refers to the types of complaints listed above.

On August 13, 2004, Governor Schwarzenegger and the State of California settled the lawsuit. As part of the lawsuit, the State of California agreed to enact legislation and provide funding to address the issues in the lawsuit. On September 29, 2004, Governor Schwarzenegger signed five bills to implement the settlement as urgency measures. Assembly Bill 2727 and Education Code §35186 require school districts to submit quarterly reports on Williams Uniform Complaints to their Governing Boards.

REPORT/PROPOSAL:

There have been no Williams Uniform Complaints (Education Code §35186) received by the Cabrillo Unified School District during the previous quarter.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve quarterly report on Williams Uniform Complaints (Education Code §35186).

SAN MATEO COUNTY OFFICE OF EDUCATION

Quarterly Report on *Williams* Uniform Complaints
[Education Code § 35186]

District: Cabrillo Unified School District

Person completing this form: Patricia Serrano Title: Administrative Assistant to the Superintendent

Quarterly Report:
(*check one*)

- ☐ **1st Quarter –** *7/1/2017 through 9/30/2017* **– DUE October 31, 2017**
- ☐ **2nd Quarter –** *10/1/2017 through 12/31/2017* **– DUE January 31, 2018**
- ☐ **3rd Quarter –** *1/1/2018 through 3/31/2018* **– DUE April 30, 2018**
- XX **4th Quarter –** *4/1/2018 through 6/30/2018* **– DUE July 31, 2018**

Date for information to be reported publicly at governing board meeting: August 9, 2018

Please check the box that applies:

XX No complaints were filed with any school in the district during the quarter indicated above.

☐ Complaints were filed with schools in the district during the quarter indicated above. The following chart summarizes the nature and resolution of these complaints. Copies of the complaint and the District's written response will be sent to SMCOE.

Please mark the table below with N/A if there are no complaints

General Subject Area	Total # of Complaints	# Resolved	# Unresolved
Textbooks and Instructional Materials	0	0	0
Teacher Vacancy or Misassignment	0	0	0
Facilities Conditions	0	0	0
TOTAL	0	0	0

Jane Yuster
Print Name of District Superintendent

_____ August 9, 2018
Signature of District Superintendent Date

Remember to sign and date the report after it is presented at your district's board meeting.

Please submit via email or fax to
Christian Morales-Aponte
cmaponte@smcoe.org
Phone: (650) 802-5307
Fax: (650) 802-5363

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.l

BOARD AGENDA ITEM: Approve and Adopt Minutes of June 21, 2018, 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 June 21, 2018, 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 June 21, 2018, regular Governing Board meeting.

Governing Board Meeting (Unadopted) Minutes
CABRILLO UNIFIED SCHOOL DISTRICT

District Office Board Room
498 Kelly Avenue, Half Moon Bay, CA 94109
June 21, 2018 7:00 PM
(Closed Session 6:00 PM)

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

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

2. **ROLL CALL / QUORUM**

   ___ Ms. Sophia Layne, Vice President
   ___ Dr. Kirk Riemer, Ph.D., Member
   ___ Ms. Freya McCamant, Member

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

   None

4. **RECESS TO CLOSED SESSION – 6:02 P.M.**

5. **RECONVENE OPEN SESSION – 7:03 P.M.**

   The Governing Board met in closed session from 6:02 p.m. to 7:00 p.m. and took no action.

6. **PLEDGE OF ALLEGIANCE**

   The pledge of allegiance was led by Governing Board Vice President, Sophia Layne.

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

Motion to approve the agenda as presented was made by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-90) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

8. **STUDENT / STAFF / COMMUNITY RECOGNITION**

None

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

Ms. Angela Bolton, 515 Metzger Street, Half Moon Bay, Ca 94019. Ms. Bolton came to address the Governing Board regarding mold policy.

Ms. Martha Ladd, Principal, El Granada Elementary School. Ms. Ladd came to address the Governing Board regarding her request for a resolution condemning the action of the immigration policy that separates children from their parents.

10. **REPRESENTATIVE REPORTS**

CUTA President Sean Riordan said as he is ready to sail away for the summer, and wanted to thank the custodians, groundskeepers, and maintenance workers, CSEA members, who will be getting the classrooms ready to their return in the fall.

11. **REPORTS / INFORMATION / PRESENTATIONS**

a. None

12. **DISCUSSION ITEMS**

a. Receive and Discuss Update on The Big Lift in San Mateo County and Cabrillo Unified School District

Mr. Marco Chavez, Administrator, Board Support and Community Relations, Office of the Superintendent, San Mateo County Office of Education, came to present a report on the county Big Lift program in its fourth year.

13. **COMMUNICATIONS**

Board Members

Member Freya McCamant said if everyone had not heard, Measure M as of 4:30 p.m. on this night, the vote count is at 55.06% and reminded everyone it is a real lesson that every vote does count. She said there may be still about 100 votes to count so the vote is still not final at this time.

Member Kirk Riemer said Happy Summer to all. He said he participated in the High School graduation ceremony. Dr. Riemer said each year at graduation, the students who have been in the district since kindergarten are asked to stand. This year, at least 85% of the graduating class stood. Dr. Riemer said this was a testament to the quality of the district's public schools.

Member Sophia Layne said this is the time of year that we can look back and reflect on the students, with the celebrations of promotions, and graduations and celebrating their accomplishments. She thanked everyone for their hard work all year long and hoped they have a chance to recharge and come back in the fall refreshed.

Superintendent

Superintendent Yuster said the graduation and promotion ceremonies were really lovely. She said it was so great to see the students moving on and forward in their educational careers and to see so much affection they have for their parents and teachers. Ms. Yuster commented some of the students had so many stoles, sashes and cords, for their achievements, that it was amazing. For the first time we had students graduating from Pilarcitos High School receive scholarships to college. She wished everyone a really great summer, with time to relax and will see everyone in August.

14. **CONSENT ITEMS**

a. Approve Agricultural Career Technical Education Incentive Grant for 2018-2019

b. Approve Certificated Personnel Report

c. Approve Classified Personnel Report

d. Accept Donations to Cabrillo Unified School District

e. Accept Enrollment Report for the Ninth Month of the 2017-2018 School Year

f. Approve the Spring/Summer Submission of the Consolidated Application & Reporting System

g. Approve a Professional Services Agreement with the Law Firm of Atkinson, Andelson, Loya, Ruud, and Romo for Special Education Legal Services

h. Approve and Adopt Minutes of June 7, 2018 Regular Governing Board Meeting

Motion to approve consent items as presented was made by Member Freya McCamant and seconded by Member Kirk Riemer.

(M-91) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

15. **ACTION ITEMS**

a. Approve the 2018-2019 Local Control Accountability Plan

Motion to approve the 2018-2019 Local Control Accountability Plan as presented was made by Member Freya McCamant seconded by Member Kirk Riemer.

(M-92) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

b. Adopt 2018-2019 District Budget

Motion to adopt the 2018-2019 District Budget as presented was made by Member Freya McCamant and seconded by Member Kirk Riemer.

(M-93) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

c. Adopt Resolution No. 11-18 Authorizing the District to Spend Funds Received in 2017-2018 from the Education Protection Account in Accordance with Article XIII, Section 36 of the California Constitution

Motion to adopt Resolution No. 11-18 authorizing the district to spend funds received in 2017-2018 from the Education Protection Account in accordance with Article XIII, section 36 of the California Constitution was made by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-94) Passed 3-0
Roll Call:
Mr. Rob Pappalardo-absent
Ms. Sophia Layne-aye
Ms. Kimberly Hines-absent
Dr. Kirk Riemer-aye
Ms. Freya McCamant-aye

d. Adopt Resolution No. 12-18 to Designate Authorized Representatives of Cabrillo Unified School District as Signatories Effective July 1, 2018

Motion to adopt Resolution No. 12-18 to designate authorized representatives of Cabrillo Unified School District as signatories effective July 1, 2018 was made by Member Freya McCamant and seconded by Member Kirk Riemer.

(M-95) Passed 3-0
Roll Call:
Mr. Rob Pappalardo-absent
Ms. Sophia Layne-aye
Ms. Kimberly Hines-absent
Dr. Kirk Riemer-aye
Ms. Freya McCamant-aye

e. Approve Amendment to Lease-Lease Back Agreement with Blach Construction

Motion to approve amendment to Lease-Lease Back agreement with Black Construction for the repair of the Cunha C Building was made by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-96) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

f. Approve ZUM Services, Inc. Transportation Contract for the 2018-2019 School Year for Student Who Receive Special Education Services and Attend Non-Public Schools

Motion to approve ZUM Services, Inc. transportation contract for the 2018-2019 school for students who receive special education services and attend non-public schools was made by Member Freya McCamant and seconded by Member Kirk Riemer.

(M-97) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

g. Approve School Lunch Service Contract for the 2018-2019 School Year Between Nob Hill Catering, DBA LunchMaster and Cabrillo Unified School District

Motion to approve school lunch service contract for the 2018-2019 school year between Nob Hill Catering, DBA Lunch Master and Cabrillo Unified School District was made by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-98) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

h. 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 updates and adopt revised Board policies, BP 1250, BP 5022, BP 5111, BP 5125, BP 5131.2, 5145.6, BP 5145.11, and BP 5145.13, for compliance with CA law AB699 as recommended by the California School Board Association and San Mateo County Counsel was made by Member Freya McCamant and seconded by Member Kirk Riemer.

(M-99) Passed 5-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

16. **ADJOURNMENT OF THE MEETING**

Motion to adjourn made by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-100) Passed 3-0
Member Rob Pappalardo-Absent
Member Kimberly Hines-Absent

Meeting was adjourned at 7:59 p.m.

Minutes prepared by Patricia Serrano, Administrative Assistant to the Superintendent

Minutes presented by Jane Yuster, Secretary to the Governing Board

Certified by:

_____ _____

Kimberly Hines Date
Clerk to the Governing Board

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.m

BOARD AGENDA ITEM: Approve and Adopt Minutes of July 24, 2018, 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 July 24, 2018, special 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 July 24, 2018, special Governing Board meeting.

Special Meeting-Governing Board Work Session

(Unadopted) Minutes

CABRILLO UNIFIED SCHOOL DISTRICT
Pilarcitos High School Multipurpose Room
498 Kelly Avenue, Half Moon Bay, CA 94109
July 24, 2018, 4:00 P.M.

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

1. **CALL TO ORDER - 4:12 P.M.**

2. **ROLL CALL / QUORUM**

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

3. **PLEDGE OF ALLEGIANCE**

The pledge of allegiance was let by Member Rob Pappalardo.

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

Motion to adopt the agenda as presented was made by Member Sophia Layne and seconded by Member Freya McCamant.

(M-01) Passed 5-0

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

None

6. RECESS TO CLOSED WORK SESSION-4:13 PM

The Governing Board met in closed session from 4:13 p.m. to 8:57 p.m. and took no action.

A motion was made to continue past curfew if necessary by Member Kirk Riemer and seconded by Member Freya McCamant.

(M-02) Passed 5-0

7. ADJOURNMENT OF THE MEETING

Motion to adjourn made by Member Kirk Riemer and seconded by Member Kimberly Hines.

(M-03) Passed 5-0

Meeting was adjourned at 8:57 p.m.

Minutes prepared by Patricia Serrano, Administrative Assistant to the Superintendent

Minutes presented by Jane Yuster, Secretary to the Governing Board

Certified by:

_____ _____

Kimberly Hines Date
Clerk to the Governing Board

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 14.n

BOARD AGENDA ITEM: Approve Declaration of District Property as Surplus

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND:

The Governing Board recognizes the need to continually enhance student learning by providing access to high quality textbooks, equipment and other instruction materials.

From time to time, the District identifies furniture and equipment that is no longer needed. These items are catalogued and a notice is sent to the school sites advertising the free distribution of these items. The remaining items are then brought to the Board for the purpose of being declared surplus. This action allows us to either sell or donate the items.

REPORT/PROPOSAL:

The District has identified 138 books that are no longer needed. Once declared, "surplus," the items will be sold or donated as circumstances permit.

It is requested that the Governing Board declare the 138 books listed (see attached) as surplus. Books will be donated to La Costa students and Puente Adult Education in Pescadero.

FINANCIAL IMPACT:

There may be a small positive financial impact to the General Fund.

RECOMMENDATION:

Approve Declaration of District Property as surplus.

Title	Course	Type	ISBN	# of Books
Reasoning Through LANGUAGE ARTS	Test Preparation for the 2014 GED TEST	Workbook	978-0-544-27431-0	5
Reasoning Through LANGUAGE ARTS	Test Preparation for the 2014 GED TEST	Student Book	978-0-544-27426-6	5
MATHMATICAL REASONING	Test Preparation for the 2014 GED TEST	Workbook	978-0-544-27434-1	7
MATHMATICAL REASONING	Test Preparation for the 2014 GED TEST	Student Book	978-0-544-27427-2	8
More Easy Stories Plus	Readings and Activities for Language Skills		978-1-56420-550-6	3
READY TO GO 1 with Grammar Booster	Language Lifeskills Civics	Student Book	0-13-191916-4	5
READY TO GO 1	Language Lifeskills Civics	Workbook	0-13-183456-8	5
SIDE by SIDE	Book 2	Student Book	0-13-811241-X	1
SIDE by SIDE	Book 3	Student Book	0-13-811761-6	2
English in Action	Book 1	Student Book	978-1-4240-4990-5	17
English in Action	Book 2	Student Book	978-1-4240-4991-2	14
English in Action	Book 2	Teacher's Guide	978-1-4240-8498-2	3
English in Action (Packaged)	Book 2	Student Book & Workbook	978-1-11-122738-8	1
English in Action	Book 4	Student Book	978-1-4240-4993-6	1
Downtown Basic	English for Work and Life	Student Book	978-1-4240-1656-3	8
Downtown Basic	English for Work and Life	Workbook	978-1-4240-1670-9	10
Downtown Basic (Packaged)	English for Work and Life	Student Book & Workbook	978-7-424-09095-2	42
Downtown 1	English for Work and Life	Student Book	978-0-8384-4374-3	1
			Total # Books:	**138**

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 15.a

BOARD AGENDA ITEM: Approve Amendment No. 2 to Facilities Lease by and between Cabrillo Unified School District and Blach Construction Company

DEPARTMENT: Business Department

CONTACT PERSON: Crystal Leach, Chief Business Official

BACKGROUND INFORMATION:

On September 13, 2017, the Governing Board approved entering into a lease-leaseback agreement to construct the repair of Cunha C Building ("Project"). On October 13, 2016, the Governing Board approved the lease-leaseback project delivery method as authorized by Education Code section 14706. Under amended Education Code section 17406, school districts may now enter into lease-leaseback agreement before they have project plans approved by the Division of the State Architect ("DSA"). This allows for lease-leaseback developers to have earlier input into constructability and value-engineering of the plans, but it is not possible to calculate the project's Guaranteed Maximum Price ("GMP") at the time the lease-leaseback agreements are entered into. The amended Education Code acknowledges this and provides that the construction may commence after a project is approved by the DSA.

To maintain the date for completion, the work for the Project was approved in two DSA increments, Increment 1 (exterior demolition work), and Increment 2 (interior demolition work and construction).

After Increment 1 was approved by the DSA, the GMP for Increment 1 of the Project was calculated. On June 21, 2018, the Board approved Amendment No. 1 to the Facilities Lease, which incorporated Increment 1 pricing. As noted at the June 21, 2018 meeting, the agreement would be further amended after Increment 2's DSA approval of the plans and calculation of the total Project GMP.

Increment 2 plans have been approved by the DSA and the GMP for Increment 2 has been negotiated. Amendment No. 2 incorporates the total Project GMP, including individual GMPs for Increment 1 and Increment 2, updates terms for consistency, updates the contract schedule, and inserts the applicable Schedule of Values.

REPORT/PROPOSAL:

Pursuant to Education Code section 17406, Amendment No. 2 finalizes the total Project GMP, including both DSA-approved increments. Amendment No. 2 is presented for approval.

FINANCIAL IMPACT:

There is no financial impact to the General Fund.

RECOMMENDATION:

Approve Amendment No. 2 to Facilities Lease by and between Cabrillo Unified School District and Blach Construction Company.

AMENDMENT NO. 2 TO FACILITIES LEASE
BY AND BETWEEN
CABRILLO UNIFIED SCHOOL DISTRICT AND BLACH CONSTRUCTION COMPANY

This Amendment No. 2 to the Facilities Lease ("Second Amendment") is made and entered into this 9th day of August 2018 ("Effective Date") by and between the Cabrillo Unified School District ("District") and Blach Construction Company ("Developer") (collectively, the "Parties") as follows:

RECITALS

WHEREAS, the District issued a Request for Qualifications and Proposals on pertaining to the Cunha Building C Repair Project ("Project") at the District's Cunha Intermediate School, located at 600 Church Street, Half Moon Bay, California 94019 (APN: 056-182-050), ("Project Site"); and

WHEREAS, the Governing Board of the District found Developer to be the best value to the to the District; and

WHEREAS, the Parties entered into a Facilities Lease for the Project, dated September 14, 2017 and ratified by the District's Board on November 9, 2017; and

WHEREAS, the plans and specifications for the portion of the Project, including demolition and initial site work, has been completed and subcontractors provided bids thereto ("Increment 1");

WHEREAS, effective June 7, 2018, the District and Developer amended the Facilities Lease per Amendment No. 1 to incorporate the Guaranteed Maximum Price for the Increment 1 work then bid to date;

WHEREAS, the plans and specifications for the portion of the Project, including internal demolition and construction work, has been completed and approved by DSA and subcontractors provided bids thereto ("Increment 2"); and

WHEREAS, the Parties wish to amend and supplement the Facilities Lease to amend the Project's Guaranteed Maximum Price to include the Increment 2 work bid to date.

WHEREAS, the Parties wish to further amend and supplement **Section 10.2 of the Facilities Lease** (Schedule) to delete it in its entirety and replace it with the following:

> 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, 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.

WHEREAS, the Parties wish to further amend and supplement **Section 11.1.2 of the Facilities Lease** (Contract Time/Contract Schedule) to delete it in its entirety and replace it with the following:

> It is hereby understood and agreed that the Contract Time for this Project shall be Four Hundred Fifty-Six (456) 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 September 18, 2019 ("Contract Time"). The Contract Schedule must be approved by the District.

WHEREAS, the Parties wish to further amend and supplement **Exhibit C** (Guaranteed Maximum Price and Other Project Cost, Funding, and Payment Provisions) to the Facilities Lease such that the existing Exhibit C, previously inserted pursuant to Amendment No. 1, is struck and replaced with the amended Exhibit C attached within the amended Facilities Lease attached hereto as **Exhibit "1"** and incorporated herein by this reference. All references to Exhibit C in the Facilities Lease shall mean and refer to that contained within Exhibit "1" hereto.

WHEREAS, the Parties expressly acknowledge and agree that the amended **Exhibit C** is intended to and does change payment provisions for the Project under the Facilities Lease, including, but not limited to, the amount of Tenant Improvement Payments and amount of Lease Payments.

WHEREAS, the Parties wish to further amend and supplement **Exhibit F** (Contract Schedule) to the Facilities Lease such that the Exhibit F attached hereto within the amended Facilities Lease attached hereto as **Exhibit "1"** shall constitute Exhibit F to the Facilities Lease.

WHEREAS, the Parties wish to further amend and supplement **Exhibit G** (Schedule of Values) to the Facilities Lease such that the Exhibit G attached hereto within the amended Facilities Lease attached hereto as **Exhibit "1"** shall constitute Exhibit G to the Facilities Lease.

NOW, THEREFORE, the Parties agree as follows:

Section I. Amendment to Facilities Lease

The Facilities Lease, and all Exhibits incorporated therein, shall be superseded and replaced by the Facilities Lease attached hereto as **Exhibit "1,"** inclusive of all Exhibits incorporated therein.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Section II. All Other Provisions Reaffirmed.

All other provisions of the Facilities Lease shall remain in full force and effect and are hereby reaffirmed. If there is any conflict between this Second Amendment and any provision of the Facilities Lease as amended, the provisions of this Second Amendment shall control.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to the 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: _____, 2018	Dated: _____, 2018
CABRILLO UNIFIED SCHOOL DISTRICT	BLACH CONSTRUCTION COMPANY
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT 1

[REMAINDER OF PAGE INTENTIONALLY BLANK, EXHIBIT FOLLOWS]

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, 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 thosand, 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 Four Hundred Fifty-Six (456) 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 September 18, 2019 ("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 FOR PROJECT INCREMENT ONE WORK

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 Increment 1 of the Project to be constructed for Two Million, Four Hundred Sixty-Three Thousand, Five Hundred and Six Dollars ($2,463,506) ("Increment 1 GMP"), and Increment 2 of the Project to be constructed for Fourteen Million, Six Hundred Eleven Thousand, Seven Hundred and Forty-Six Dollars ($14,611,746) ("Increment 2 GMP"). Increment 1 GMP and Increment 2 GMP together constitute the Project's total Guaranteed Maximum Price, which is **Seventeen Million, One Hundred Seventy-Three Thousand, and Fifty-Two Dollars ($17,173,052)** ("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 Allowances for the Tasks/Work as noted 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.

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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 for Increment 1 shall be a flat fee in the amount of Ninety-Four Thousand, Seven Hundred and Eighteen Dollars ($94,718) 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 and Six Tenths of One percent (1.6%) of the Cost of the Work for insurance, including Builders Risk 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 Increment 1 GMP includes a Developer Contingency of Twelve Percent (12%) of the Cost of the Work of Increment 1 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 Increment 2 GMP includes a Developer Contingency of Fifteen Percent (15%) of the Cost of the Work of Increment 2 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.

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

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

2.1.9.5 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 As set forth in Section 2, the Guaranteed Maximum Price consists of the Increment 1 GMP and Increment 2 GMP amounts 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, 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 and the unused portions of the Allowances identified in Attachment 2, 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

INCREMENT 1 GENERAL CONDITIONS COSTS

BLACH CONSTRUCTION **GENERAL CONDITIONS**

Project Name: Cunha Bldg. C Rehabilitation INC 1
600 Church Street
Cabrillo Unified School District

Architect: ABA Architects

Project Manager: Brian Azzopardi

Date 05/07/18

Description			Rate $/hr	Duration		Cost	
Staffing							
Project Executive	2	(hrs/wk)	225	4	mo	$	7,794
Project Manager	40	(hrs/wk)	135	4	mo	$	93,528
Project Manager	40	(hrs/wk)	135	4	mo	$	93,528
Project Assistant	20	(hrs/wk)	80	3	mo	$	20,784
Project Intern	40	(hrs/wk)	50	2	mo	$	17,320
Safety/Quality Control Manager	20	(hrs/wk)	140	4	mo	$	48,496
Superintendent	40	(hrs/wk)	140	4	mo	$	96,992
Constructability Supt.	40	(hrs/wk)	140	1	mo	$	24,248
Preconstruction		LS				$	-
Foreman	40	(hrs/wk)	115	3	mo	$	59,754
Non Staffing							
Drinking Water			400	3	mo	$	1,200
IT Mobilization			4000	1	ls	$	4,000
Cellular Phones			500	4	mo	$	2,000
Mobilization & Setup			5000	1	ls	$	5,000
Office Trailer, Large			950	3	mo	$	2,850
Temporary Toilets			1200	3	mo	$	3,600
Small Tools & Equipment			500	3	mo	$	1,500
Temporary Fencing			900	3	mo	$	2,700
IOR Trailer			600	3	mo	$	1,800
Copy Machine			500	3	mo	$	1,500
Computers			1275	4	mo	$	5,100
Pick Up Truck			1250	4	mo	$	5,000
Fuel, Oil & Grease			1000	4	mo	$	4,000
Postage			50	4	mo	$	200
Office Supplies			400	4	mo	$	1,600
Project Signs			1000	4	ea	$	4,000
Blueprint Costs			4500	1	ls	$	4,500
Dumpsters			2500	3	mo	$	7,500
Safety/First Aid			2500	3	ls	$	7,500
Data Processing/Info Services			1500	3	mo	$	4,500
Textura Fee			2500	1	ls	$	2,500
Ebix			600	1	ls	$	600
					TOTAL	**$**	**535,594**

BLACH CONSTRUCTION

GENERAL CONDITIONS

Project Name: Cunha Building C Rehabilitation
600 Church Street INC 2
Cabrillo Unified School District

Architect: Anderson Brule Architects

Project Manager: Brian Azzopardi

Bid Date: 07/20/18

BID PACKAGE 1					
STAFFING	CMiC Phase Code	hrs/wk	Rate($)/hr	Duration (wks)	**TOTAL**
Project Executive	01-3100-05	2	$ 225	56	$ 25,200
Project Director	01-3100-05				$ -
Program Manager	01-3100-10				$ -
Project Manager	01-3100-20	40	$ 135	56	$ 302,400
Project Manager	01-3100-20	40	$ 135	40	$ 216,000
BIM Coordinator	01-3110-20	40	$ 135	2	$ 10,800
Director of MEP Services	01-3110-25				$ -
Chief Estimator	01-3110-05				$ -
Senior Project Estimator	01-3110-10				$ -
Project Estimator	01-3110-15				$ -
Sr. Cost Engineer	01-3110-17				$ -
Cost Engineer	01-3110-18				$ -
Sr. Project Engineer	01-3100-25				$ -
Project Engineer	01-3100-30	40	$ 105	56	$ 235,200
Modeling Engineer	01-3110-23				$ -
Field Office Coordinator	01-3100-35	8	$ 80	56	$ 35,840
Estimating Assistant	01-3110-24				$ -
Administrative Assistant	01-3100-40				$ -
Project Accountant	01-3100-45				$ -
Labor Compliance Administrat.	01-3100-50	2	$ 80	56	$ 8,960
Project Intern	01-3100-55	40	$ 50	6	$ 12,000
Safety Director	01-3120-10	4	$ 140	56	$ 31,360
General Superintendent	01-3120-05	2	$ 225	56	$ 25,200
Safety Intern	01-3120-13				$ -
Constructability Supt.	01-3120-15				$ -
Project Superintendent	01-3120-20	40	$ 150	60	$ 360,000
Project Superintendent - Asst	01-3120-25				$ -
Superintendent - Precon	01-3120-30				$ -
Project Foreman	01-3120-35	40	$ 115	56	$ 257,600
	TOTAL STAFFING				**$ 1,520,560**

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INCREMENT 2 GENERAL CONDITIONS COSTS CONTINUED

NON STAFFING			Rate($)/mo	Duration (Mo)	Total
Travel	01-3130-05				$ -
Subsistence	01-3130-10				$ -
Entertainment	01-3130-15				$ -
Warranty/Close-out Work	01-7813-01		$ 5,200	1	$ 5,200
LEED/CHPS/Sustainability	01-7853-01				$ -
Staff Overtime	01-3130-20				$ -
One-time Staffing Options	01-3999-01				$ -
Temporary Utilities	01-5999-01				$ -
Electrical Power Service Setup	01-5113-01				$ -
Electrical Energy Consumption	01-5113-01				$ -
Temp Construction Lighting	01-5126-01		$ 600	13	$ 7,800
Temporary Toilets	01-5219-01		$ 1,200	13	$ 15,600
Temporary Construction Water	01-5136-01				$ -
Water Charges	01-5136-01				$ -
Drinking Water	01-5222-01		$ 300	13	$ 3,900
Project Telephone Service	01-5133-01		$ 375	13	$ 4,875
Cellular Telephones	01-5134-01		$ 645	13	$ 8,385
Temporary Heat	01-5123-01				$ -
One-Time Utilities Option	01-5999-01				$ -
Temporary Facilities	01-5999-01				$ -
Mobilization & Setup	01-7113-01				$ -
Office Trailer	01-5213-01		$ 950	13	$ 12,350
Office Trailer Furnishings	01-5215-01				$ -
IOR Trailer	01-5214-01		$ 600	13	$ 7,800
Storage Bins	01-5216-01		$ 200	13	$ 2,600
FAX & Copy Machine	01-5220-01		$ 500	13	$ 6,500
Computer	01-5221-01		$ 1,275	13	$ 16,575
Personnel Parking	01-5223-01				$ -
Temporary Construction Fencing	01-5626-01		$ 900	13	$ 11,700
Safety Railing	01-5613-01				$ -
Floor Opening Protection	01-5633-01				$ -
Pedestrian Walkways	01-5629-01				$ -
Barricades	01-5623-01				$ -
Traffic Control	01-5526-01				$ -
Project Sign	01-5813-01				$ -
Constr Yard Erosion Control	01-5723-01				$ -
Constr Yard Winterization	01-5723-01				$ -
Constr Yard Access Roads	01-5513-01				$ -
One-time Temporary Facilities	01-5999-01				$ -
Pick-up Truck	01-5224-01		$ 1,250	13	$ 16,250
Flatbed Truck	01-5226-01		$ 1,250	4	$ 5,000
Forklift	01-5415-01				$ -
Reach Lift	01-5415-01				$ -
Crane	01-5419-01				$ -
Material Hoisting	01-5416-01				$ -
Tower Crane Foundation	01-5419-01				$ -
Tower Crane-Erect & Dismantle	01-5419-01				$ -
Tower Crane-Operate & Rent	01-5419-01				$ -
Generator	01-5113-01				$ -
Surveying Equipment	02-2715-01				$ -
Manlift	01-5416-01				$ -
Scaffold	01-5423-01				$ -
Small Tools & Equipment	01-5301-01		$ 250	13	$ 3,250
Equipt Maintenance & Repairs	01-5303-01				$ -

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INCREMENT 2 GENERAL CONDITIONS COSTS CONTINUED

Fuel, Oil, & Grease	01-5225-01		$ 1,000	13	$ 13,000
One-time Equipt Rental Options	01-5999-01				$ -
Supplies, Clean-Up, Services	01-7140-01		$ 500	2	$ 1,000
Postage & UPS	01-7202-01		$ 100	13	$ 1,300
Office Supplies	01-7201-01		$ 400	13	$ 5,200
Project Photos	01-3233-01		$ 500	1	$ 500
Blueprint Costs	01-7203-01				$ -
Daily Cleanup	01-7413-01				$ -
Dumpsters	01-7419-01		$ 2,200	13	$ 28,600
Dump Truck & Fees	01-7419-01				$ -
Final Janitorial Cleanup	01-7423-01				$ -
Window Washing	01-5730-01				$ -
Constr Yard Dust Control	01-5726-01				$ -
Constr Yard Dewatering	01-5723-01				$ -
Security/Guard Service	01-5635-01				$ -
Safety/First Aid	01-7204-01		$ 500	13	$ 6,500
Testing and Inspection	01-4523-01				$ -
Data Processing Info Service	01-7205-01		$ 1,500	13	$ 19,500
Insurance Compliance (EBIX)	01-7207-01		$ 2,000	1	$ 2,000
Textura CPM Expense	01-7206-01		$ 2,500	1	$ 2,500
One-Time Supplies/Cleanup/Svc	01-7999-01				$ -
TOTAL NON STAFFING					**$ 207,885**
TOTAL GENERAL CONDITIONS					**$ 1,728,445**

[END OF ATTACHMENT 1]

ATTACHMENT 2

INCREMENT 1 GMP

BLACH CONSTRUCTION

GUARANTEED MAXIMUM PRICE

Project Name:	Cunha Bldg. C Rehabilitation INC 1 600 Church Street
Client:	Cabrillo Unified School District
Architect:	ABA Architects
Project Manager:	Brian Azzopardi
Date:	6/1/2018

ITEM	Resp	DESCRIPTION	SUBCONTRACTOR		TOTAL	Notes
0		General Conditions	Blach Construction	$	535,594	
1		Demolition	Restec	$	332,629	
2		Electrical	Atlas	$	222,800	
3		Plumbing	Paragon Mechancial	$	25,158	
4		HVAC	Paragon Mechanical	$	46,295	
5		Fire Sprinklers	RCM Fire Protection	$	14,090	
6		Clearing and Grubbing	Andreini	$	42,856	
7		Scaffolding and Shrink Wrap	Safeway Services	$	483,654	
8		Parking Lot Striping & Signage	Cee-Gee Parking Lot Striping	$	7,500	
9		Roofing	Alcal	$	15,340	
10		Doors and Frames	Lincoln Glass	$	77,480	
11		Site Management	Blach Construction & Misc	$	235,740	
		SUBTOTAL		$	2,039,136	
41		Subcontractor Default Insurance		$	23,173	
42	1.00%	General Liability Insurance		$	20,623	
43	0.001%	Builder's Risk		$	2,500	
44	0.80%	Performance & Payment Bonds		$	19,409	
45	4.50%	Fee		$	94,718	
		SUBTOTAL		$	2,199,559	
46	12.0%	Construction Contingency		$	263,947	
		TOTAL GUARANTEED MAXIMUM PRICE (GMP)		**$**	**2,463,506**	

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INCREMENT 1 CLARIFICATIONS AND EXCLUSIONS

BLACH CONSTRUCTION

CLARIFICATIONS & EXCLUSIONS

Project Name:	Cunha Bldg. C Rehabilitation INC 1 600 Church Street
Client:	Cabrillo Unified School District
Architect:	ABA Architects
Project Manager:	Brian Azzopardi
Date:	5/11/2018

CLARIFICATION

1. This portion of the GMP only includes the demolition work called out in the drawings for INC 1. Additional MEP safeoff will take place during INC 1, as required for the safe demolition scope.
2. No work is to be completed at the elevator and sprinkler system. These items will be protected in place.
3. All casework that has been previously removed or is not currently mounted to the walls, is to be demolished in INC 1 and replaced new in INC 2.
4. No mold remediation is included in INC 1 pricing. All mold remediation is to be completed in INC 2.
5. Testing of the existing HVAC systems is being carried as an internal allowance for $22,000. This will be used if necessary to confirm the existing units and ductwork are functioning properly prior to Blach starting HVAC safe off.
6. The construction trailer and IOR trailer will tie into the existing utilities near the portable buildings. See the logistics plan. All landscaping and low green fencing around the building will be demolished in INC 1. See the logistics plan. A plan for the reinstallation of the landscaping and fencing will need to be determined and included in INC 2.
7. All exterior plywood sheathing is to be included in INC 2 scope of work.
8. All doors, frames and hardware are required to be removed from the building to complete the INC 1 & INC 2 scopes. These materials will be removed, catalogued and stored off site. These materials are to be reused and reinstalled in INC 2.

EXCLUSIONS

1. Handling, remediation and disposal of hazardous material.
2. All utility costs are excluded. Water and Electrical costs will increase on the District's utility bills due to the high usage required during construction.
3.
4.
5.

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BLACH CONSTRUCTION

GUARANTEED MAXIMUM PRICE

Project Name:	Cunha Building C Rehabilitation 600 Church Street INC 2
Client:	Cabrillo Unified School District
Architect:	Anderson Brule Architects
Project Manager:	Brian Azzopardi
Date:	7/20/2018

ITEM	DESCRIPTION	SUBCONTRACTOR		TOTAL
0	General Conditions	Blach Construction	$	1,728,445
1	Demolition	Restec	$	452,831
2	Electrical	Atlas	$	402,300
3	Plumbing	Paragon Mech	$	159,524
4	HVAC	Paragon Mech	$	390,263
5	Fire Sprinklers	TBD	$	80,000
6	Clearing & Grubbing	Included in INC 1	$	-
7	Scaffolding & Shrinkwrap	Included in INC 1	$	-
8	Parking Lot Striping	Included in INC 1	$	-
9	Roofing	Waterproofing Associates	$	410,118
10	N/A	N/A	$	-
11	Concrete	Dolan Concrete	$	75,500
12	Structrual Steel	Glazier	$	567,429
13	Rough Carpentry	Blach Construction	$	971,241
14	Casework	Crestmark	$	364,454
15	Specialties	Universal Plastics	$	40,850
16	N/A	N/A	$	-
17	Sheet Metal	West Coast Sheet Metal	$	488,622
18	Joint Sealants	Valley Waterproofing	$	133,527
19	Doors Frames & Hardware	Lincoln Glass	$	240,706
20	Glass and Storefront	Lincoln Glass	$	1,080,987
21	Drywall & Insulation	Daleys	$	233,796
22	Lath & Plaster & Vapor Barrier	O'Donnell Plastering	$	1,124,240
23	Acoustical Ceilings	Ad-In, Inc	$	157,240
24	Flooring	BT Mancini	$	184,999
25	Painting	Bucher Painting	$	173,136
26	Signage	Sign Source	$	29,573
27	Fire Protection	N/A	$	16,200
28	Window Coverings	Peninsulators	$	9,670
29	N/A	N/A	$	-

INCREMENT 2 GMP CONTINUED

30		Site Management	N/A	$	307,084
31		N/A	N/A	$	-
32		Landscaping	BP#32 Subcontractor	$	125,000
33		Walkway Waterproofing	Waterproofing Associates	$	181,748
34		Final Cleaning	Nor Cal Building Maint	$	31,300
		SUBTOTAL		$	10,160,784
50		Subcontractor Default Insurance		$	121,137
51	1.00%	General Liability Insurance		$	102,819
52	0.60%	Builder's Risk		$	62,308
53	0.80%	Performance & Payment Bonds- Total Contract Price		$	88,253
54	4.5%	Fee		$	474,089
		SUBTOTAL		$	11,009,389
55	15%	Construction Contingency		$	1,651,408
56		Allowance #1	Additional Demo & Rehabilitation Allowance	$	500,000
57		Allowance #2	Floor Prep & Moisture Testing Allowance	$	168,000
58		Allowance #3	Dehumidification of Building Allowance	$	100,000
59		Allowance #4	100% Exterior Sheathing, Added Framing & Electrica	$	1,182,948
		INC 2 TOTAL GUARANTEED MAXIMUM PRICE (GMP)		**$**	**14,611,746**
		INC 1 TOTAL GUARANTEED MAXIMUM PRICE (GMP) 6/1/2018		**$**	**2,463,506**
		ORIGINAL PRECONSTRUCTION CONTRACT VALUE 2/14/2018		**$**	**97,800**
		COMPLETE PROJECT GMP		**$**	**17,173,052**

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INCREMENT 2 CLARIFICATIONS AND EXCLUSIONS

BLACH CONSTRUCTION

CLARIFICATIONS & EXCLUSIONS

Project Name:	Cunha Building C Rehabilitation 600 Church Street INC 2
Client:	Cabrillo Unified School District
Architect:	Anderson Brule Architects
Project Manager:	Brian Azzopardi
Date:	7/20/2018

CLARIFICATION

1. Item #5 for the Fire Sprinkler line is a placeholder. There is currently no design to repair the sprinkler system. This place holder is for design drawings, replacement of the exterior sprinkler heads, and two new expansion joints in the fire sprinkler main lines.
2. Item #20 for the glass and storefront is priced as Kawneer CW 1600 System. If a different window system is required to be installed, this line item will need to be repriced.
3. Item #32 Landscaping is a placeholder. There is currently no design for the landscaping replacement. This number should be allocated to the removal of the base rock, planting material import, fencing reinstallation, necessary irrigation adjustments, and new planting. Official design to be determined with CUSD and the architect in the future.
4. Builder's Risk insurance needs to be included in this contract as it was not allocated for in the original contract language. This GMP includes the costs for Blach to carry the builders risk insurance.
5. See the list of Clarifications from INC 1. Those clarifications are still valid.
6. Item #13 includes carpentry work as shown in the drawings. Any unforeseen conditions work for carpentry work will be pulled from the allowances allocated. 100% exterior sheathing replacement will be evaluated on an as needed basis and those funds will be pulled from the allowances.
7. The current construction schedule does not include any durations and time frames for design and DSA approval of the Fire Sprinkler System. This will be added to the schedule once determined with the design team.
8. The attached INC 2 schedule includes, revises and supersedes the INC 1 construction schedule.
9. INC 2 GMP attached is in addition to INC 1 GMP.
10. Mock up costs are included in the GMP.

EXCLUSIONS

1. See the list of exclusions from INC 1. Those exclusions are still valid.

[END OF ATTACHMENT 2]

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**	

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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 September 14, 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

1.1.13 Contract 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.

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.

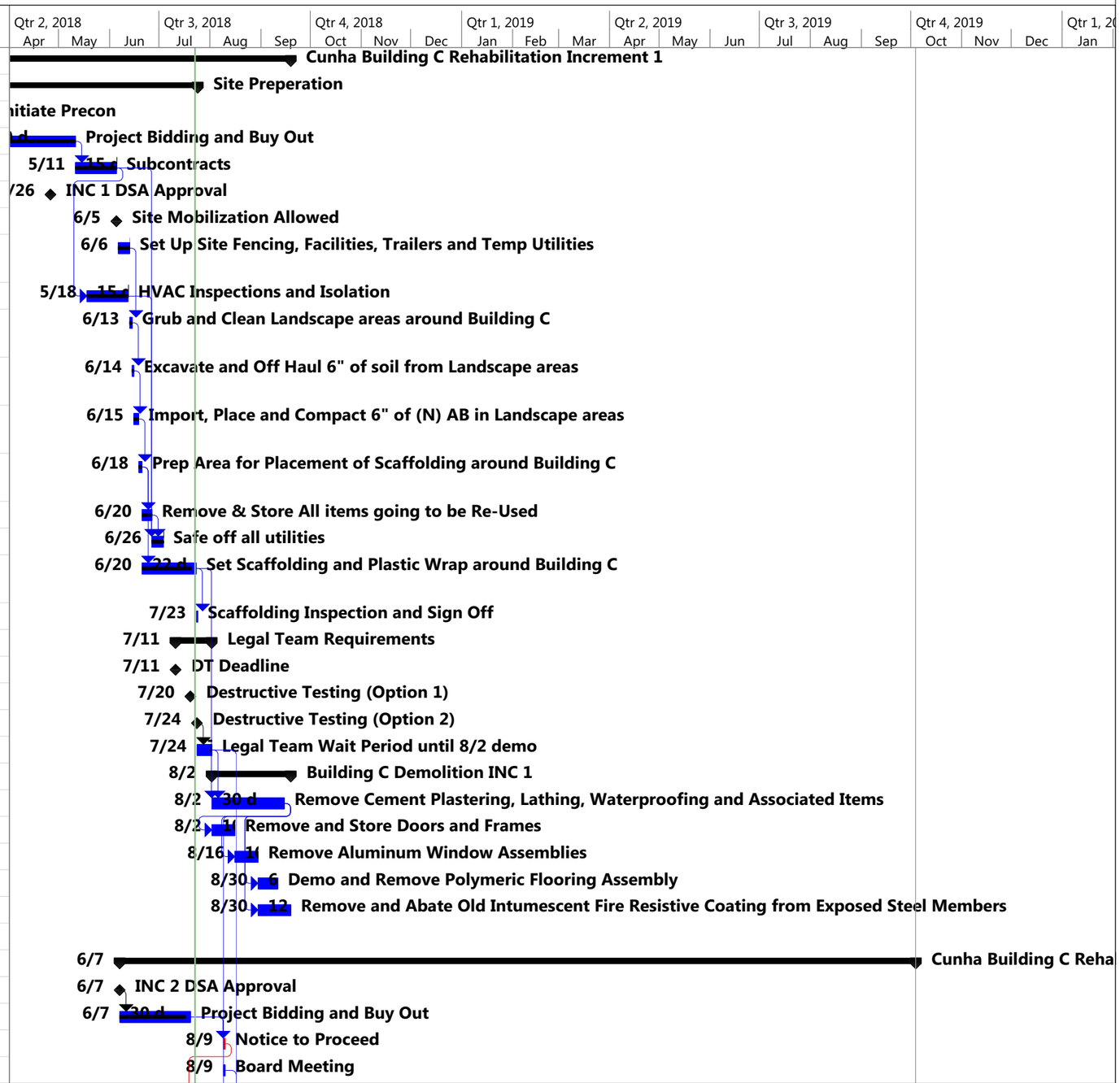
[To Be Attached.]

Exhibit F - Construction Schedule

BLACH CONSTRUCTION

Cunha Building C Rehabilitation
INC 1 & INC 2 Construction Schedule

ID	Task Mode	Task Name	Duration	Start	Finish
1		**Cunha Building C Rehabilitation Increment 1**	**128 d**	**3/16/18**	**9/18/18**
2		**Site Preperation**	**89.5 d**	**3/16/18**	**7/24/18**
3		Initiate Precon	0 d	3/16/18	3/16/18
4		Project Bidding and Buy Out	40 d	3/16/18	5/10/18
5		Subcontracts	15 d	5/11/18	6/4/18
6		INC 1 DSA Approval	0 d	4/26/18	4/26/18
7		Site Mobilization Allowed	0 d	6/5/18	6/5/18
8		Set Up Site Fencing, Facilities, Trailers and Temp Utilities	5 d	6/6/18	6/12/18
9		HVAC Inspections and Isolation	15 d	5/18/18	6/11/18
10		Grub and Clean Landscape areas around Building C	1.5 d	6/13/18	6/14/18
11		Excavate and Off Haul 6" of soil from Landscape areas	1 d	6/14/18	6/15/18
12		Import, Place and Compact 6" of (N) AB in Landscape areas	1 d	6/15/18	6/18/18
13		Prep Area for Placement of Scaffolding around Building C	2 d	6/18/18	6/20/18
14		Remove & Store All items going to be Re-Used	4 d	6/20/18	6/26/18
15		Safe off all utilities	5 d	6/26/18	7/3/18
16		Set Scaffolding and Plastic Wrap around Building C	22 d	6/20/18	7/23/18
17		Scaffolding Inspection and Sign Off	1 d	7/23/18	7/24/18
18		**Legal Team Requirements**	**16 d**	**7/11/18**	**8/1/18**
19		DT Deadline	0 d	7/11/18	7/11/18
20		Destructive Testing (Option 1)	0 d	7/20/18	7/20/18
21		Destructive Testing (Option 2)	0 d	7/24/18	7/24/18
22		Legal Team Wait Period until 8/2 demo	7 d	7/24/18	8/1/18
23		**Building C Demolition INC 1**	**32 d**	**8/2/18**	**9/18/18**
24		Remove Cement Plastering, Lathing, Waterproofing a	30 d	8/2/18	9/14/18
25		Remove and Store Doors and Frames	10 d	8/2/18	8/15/18
26		Remove Aluminum Window Assemblies	10 d	8/16/18	8/29/18
27		Demo and Remove Polymeric Flooring Assembly	6 d	8/30/18	9/10/18
28		Remove and Abate Old Intumescent Fire Resistive Co	12 d	8/30/18	9/18/18
29					
30		**Cunha Building C Rehabilitation Increment 2**	**328 d**	**6/7/18**	**10/3/19**
31		INC 2 DSA Approval	0 d	6/7/18	6/7/18
32		Project Bidding and Buy Out	30 d	6/7/18	7/19/18
33		Notice to Proceed	1 d	8/9/18	8/9/18
34		Board Meeting	1 d	8/9/18	8/9/18



BLACH CONSTRUCTION

Cunha Building C Rehabilitation
INC 1 & INC 2 Construction Schedule

ID	Task Mode	Task Name	Duration	Start	Finish
35		Subcontracts	15 d	7/27/18	8/16/18
36		**Demo Increment 2**	**20 d**	**8/17/18**	**9/17/18**
37		Interior MEP Wall Demo	15 d	8/17/18	9/10/18
38		Interior Finishes Demo	20 d	8/17/18	9/17/18
39		Interior Gyp-Crete Demo	10 d	9/4/18	9/17/18
40		**Construction - Exterior Skin**	**258 d**	**9/18/18**	**10/3/19**
41		**Exterior Sheathing & Framing 12 man crew**	**115 d**	**9/18/18**	**3/8/19**
42		Shoring and Temp Structure Installation	30 d	9/18/18	10/29/18
43		Roof Hazmat Testing	0 d	10/23/18	10/23/18
44		East Elevation 10, 17ply	20 d	10/23/18	11/19/18
45		Plumbing - Area Drain Repair Balcony	6 d	11/20/18	11/29/18
46		Balcony Subfloor Framing	10 d	11/20/18	12/5/18
47		Balcony Guardrail Install	5 d	12/6/18	12/12/18
48		Balcony Waterproofing	26 d	12/13/18	1/24/19
49		South Elevation 20, 7 ply	10 d	11/20/18	12/5/18
50		West Elevation 43, 12 ply	20 d	12/6/18	1/8/19
51		North Elevation 2, 15 ply	10 d	1/9/19	1/23/19
52		Roof Sheathing Framing	10 d	1/9/19	1/23/19
53		Unforseen Structural Upgrades	30 d	1/24/19	3/8/19
54		Mold Inhibitor Installation	60 d	11/9/18	2/11/19
55		Structural Inspections & Documentation	115 d	9/18/18	3/8/19
56		**Exterior Finishes**	**168 d**	**1/24/19**	**9/26/19**
57		Mock Up Testing	25 d	1/24/19	3/1/19
58		Architectural ASM Copper Flashings	30 d	2/14/19	3/29/19
59		Window Installation	24 d	3/11/19	4/11/19
60		Doors, Frames, & Hardware	15 d	3/29/19	4/18/19
61		Plaster	90 d	4/5/19	8/14/19
62		Painting	13 d	8/8/19	8/26/19
63		Exterior Lighting & MEP Trim	14 d	8/14/19	9/4/19
64		Performance Caulking	11 d	8/20/19	9/5/19
65		Specialties	4 d	9/6/19	9/11/19
66		Signage	5 d	8/27/19	9/4/19
67		Exterior Final Clean	15 d	9/6/19	9/26/19
68		**Roof**	**46 d**	**7/25/19**	**9/30/19**
69		Roof Demo	15 d	7/25/19	8/14/19
70		Roof Insulation Board	12 d	8/15/19	9/3/19
71		Single Ply Roofing Installation	12 d	9/4/19	9/19/19
72		Parapet Copper Cap	7 d	9/20/19	9/30/19
73		Roof Complete	0 d	9/30/19	9/30/19



BLACH CONSTRUCTION

Cunha Building C Rehabilitation
INC 1 & INC 2 Construction Schedule

ID	Task Mode	Task Name	Duration	Start	Finish
74		**Construction - Interior**	**185 d**	**1/7/19**	**10/3/19**
75		Band Room Mechanical Upgrades	15 d	1/7/19	1/28/19
76		Start up Mechanical Units	1 d	1/29/19	1/29/19
77		Test and Balance	1 d	1/30/19	1/30/19
78		Frame interior walls (As needed)	20 d	1/24/19	2/22/19
79		Blocking and Backing	15 d	2/25/19	3/15/19
80		Rough MEP Ceilings	10 d	2/25/19	3/8/19
81		Rough MEP Walls	10 d	3/11/19	3/22/19
82		HVAC Mold Remediation Confirmation	10 d	5/3/19	5/16/19
83		Dehumidification	15 d	5/17/19	6/10/19
84		Install Wall Insulation	20 d	6/11/19	7/10/19
85		Install and Finish Sheetrock at Walls	20 d	6/18/19	7/17/19
86		Interior Prime and 1st Coat of Paint	10 d	7/11/19	7/24/19
87		Install ceiling tile and repair grid	15 d	7/18/19	8/7/19
88		Install casework	20 d	8/1/19	8/28/19
89		Install new Plumbing Fixtures	7 d	8/22/19	9/3/19
90		Electrical Trim	10 d	8/1/19	8/14/19
91		Install Flooring	20 d	8/1/19	8/28/19
92		Window Coverings	5 d	8/22/19	8/28/19
93		Final Coat of Interior Paint	12 d	9/4/19	9/19/19
94		Signage	3 d	9/10/19	9/12/19
95		Punch List	10 d	9/13/19	9/26/19
96		Final Clean	5 d	9/27/19	10/3/19
97		Substantial Completion	0 d	10/3/19	10/3/19
98		**Landscaping**	**15 d**	**8/27/19**	**9/18/19**
99		Landscaping	15 d	8/27/19	9/18/19

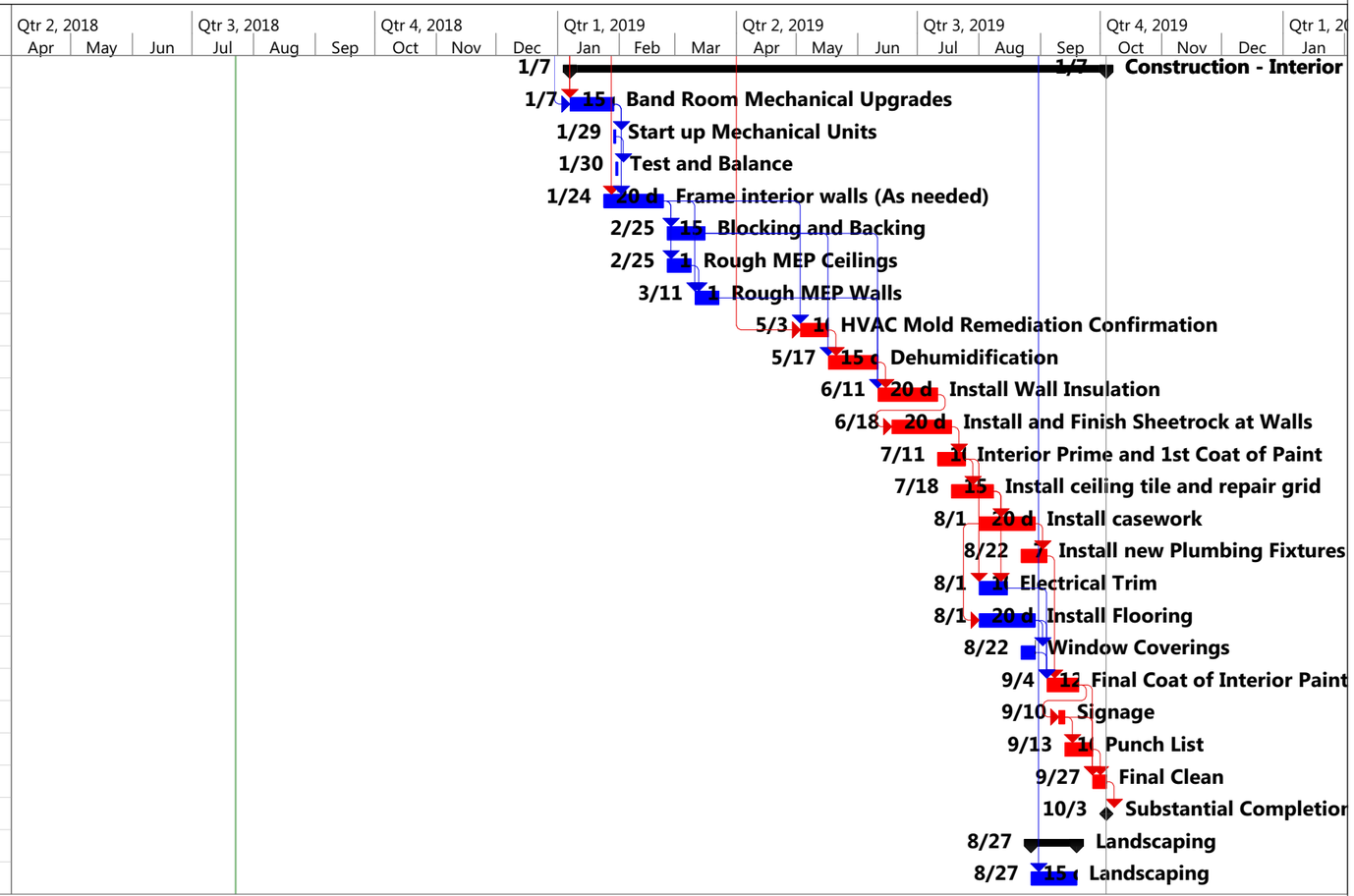


EXHIBIT G

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.]

BLACH CONSTRUCTION

Schedule of Values for Contract Attachment

Blach Construction Company

CONTINUATION SHEET

**** The $97,800 value below was specifically allocated to preconstruction services.**

PAGE:

INVOICE NO

A	B	C	D	E	F	G	H	I		J	K
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL SCHEDULE OF VALUES	APPROVED CHANGES TO SCHEDULE OF VALUES	REVISED SCHEDULE OF VALUES	WORK COMPLETED (F+G)		MATERIAL PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	PERCENT COMPLETE (%)	BALANCE TO FINISH	RETAINAGE
					FROM PREVIOUS APPLICATION	THIS PERIOD					
01	General Conditions	97,800.00	2,264,039.00	2,361,839.00			0.00				
02	Demolition & Site Management	0.00	1,069,320.00	1,069,320.00			0.00				
03	Concrete	0.00	75,500.00	75,500.00			0.00				
05	Structural Steel	0.00	567,429.00	567,429.00			0.00				
06	Rough Carpentry	0.00	971,241.00	971,241.00			0.00				
07.1	Walkway Waterproofing	0.00	181,748.00	181,748.00			0.00				
07.2	Drywall and Insulation	0.00	233,796.00	233,796.00			0.00				
07.3	Roofing	0.00	425,458.00	425,458.00			0.00				
07.4	Sheet Metal Flashings	0.00	488,622.00	488,622.00			0.00				
07.5	Joint Sealants	0.00	133,527.00	133,527.00			0.00				
08	Doors and Frames	0.00	318,186.00	318,186.00			0.00				
08.1	Windows	0.00	1,080,987.00	1,080,987.00			0.00				
09.1	Lath & Plaster & Moisture Barrier	0.00	1,124,240.00	1,124,240.00			0.00				
09.2	Acoustical Ceilings	0.00	157,240.00	157,240.00			0.00				
09.3	Flooring	0.00	184,999.00	184,999.00			0.00				
09.4	Painting	0.00	173,136.00	173,136.00			0.00				
10.1	Signage	0.00	29,573.00	29,573.00			0.00				
10.2	Fire Protection	0.00	16,200.00	16,200.00			0.00				
12.1	Window Coverings	0.00	9,670.00	9,670.00			0.00				
12.2	Casework	0.00	364,454.00	364,454.00			0.00				
13	Specialties	0.00	40,850.00	40,850.00			0.00				
14	Scaffolding	0.00	483,654.00	483,654.00			0.00				
21	Fire Sprinklers	0.00	94,090.00	94,090.00			0.00				

BLACH CONSTRUCTION

Blach Construction Company

CONTINUATION SHEET

PAGE:

INVOICE NO

A	B	C	D	E	F	G	H	I		J	K
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL SCHEDULE OF VALUES	APPROVED CHANGES TO SCHEDULE OF VALUES	REVISED SCHEDULE OF VALUES	WORK COMPLETED (F+G) FROM PREVIOUS APPLICATION	WORK COMPLETED (F+G) THIS PERIOD	MATERIAL PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	PERCENT COMPLETE (%)	BALANCE TO FINISH	RETAINAGE
22	Plumbing	0.00	184,682.00	184,682.00		0.00	0.00				
23	HVAC	0.00	436,558.00	436,558.00		0.00	0.00				
26	Electrical	0.00	625,100.00	625,100.00		0.00	0.00				
31	Site Work	0.00	309,320.00	309,320.00		0.00	0.00				
32	Landscaping	0.00	125,000.00	125,000.00		0.00	0.00				
33	Final Cleaning	0.00	31,300.00	31,300.00		0.00	0.00				
50.1	Subguard	0.00	144,310.00	144,310.00		0.00	0.00				
50.2	Liability Insurance	0.00	123,442.00	123,442.00		0.00	0.00				
50.3	Builders Risk Insurance	0.00	64,808.00	64,808.00		0.00	0.00				
50.4	Payment & Performance Bond	0.00	107,662.00	107,662.00		0.00	0.00				
50.5	Contractor Fee	0.00	568,807.00	568,807.00		0.00	0.00				
51	Contingency	0.00	1,915,355.00	1,915,355.00		0.00	0.00				
51.1	Allowance #1 Additional Demo	0.00	500,001.00	500,001.00		0.00	0.00				
51.2	Allowance #2 Floor Prep & Moisture Testing	0.00	168,000.00	168,000.00		0.00	0.00				
51.3	Allowance #3 Dehumidification	0.00	100,000.00	100,000.00		0.00	0.00				
51.4	Allowance #4 100% Exterior Sheathing & Electrical	0.00	1,182,948.00	1,182,948.00		0.00	0.00				
	PROJECT TOTAL :	**97,800.00**	**17,075,252.00**	**17,173,052.00**			**0.00**				

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

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

BOARD AGENDA NUMBER: 15.b

BOARD AGENDA ITEM: Adopt Resolution No. 13-18 Certifying to the Board of Supervisors of San Mateo County All Proceedings in the June 5, 2018 General Obligation Bond Election

DEPARTMENT: Governing Board

CONTACT PERSON: Jane Yuster, Superintendent

BACKGROUND INFORMATION:

In early July, the District received a letter formally certifying the results of the June 5 Statewide Primary Election—including confirmation of the passage of Measure M—from San Mateo County Chief Elections Officer Mark Church. A copy of the letter, certificate, and tabulations are included in this Board packet. This formal notification triggers a number of actions that the Board will now need to take in order to meet all of the legal requirements associated with successful bond measures.

One of the first of these actions involves adopting a resolution certifying the election results to the Board of Supervisors of San Mateo County. This action, in turn, commences a 60-day timeline for appointing a Citizens' Oversight Committee pursuant to the provisions and requirements of Proposition 39—the legislation that established a fifty-five percent threshold for certain kinds of bond measures.

REPORT/PROPOSAL:

A copy of proposed Resolution No. 13-18 and applicable supporting materials is attached for Board review and consideration of action.

FINANCIAL IMPACT:

There is no direct cost related to this specific action.

RECOMMENDATION:

Adopt Resolution No. 13-18 certifying to the Board of Supervisors of San Mateo County all of proceedings in the June 5, 2018 General Obligation Bond Election, as presented.

Cabrillo Unified School District

RESOLUTION NO. 13-18

RESOLUTION OF THE BOARD OF EDUCATION OF THE CABRILLO UNIFIED SCHOOL DISTRICT CERTIFYING ALL PROCEEDINGS IN THE JUNE 5, 2018, GENERAL OBLIGATION BOND ELECTION

WHEREAS, the Board of Education ("Board") of the Cabrillo Unified School District previously adopted a resolution ordering a school bond election and authorizing necessary actions in connection therewith ("Bond Resolution"), and an election to authorize the issuance of general obligation bonds was thereafter called and held on June 5, 2018 ("Bond Election"); and

WHEREAS, the Bond Resolution was duly delivered to the Registrar of Voters for San Mateo County; and

WHEREAS, notice of the Bond Election was duly given; and

WHEREAS, the Bond Election was duly held and conducted for the purpose of voting on a measure for the issuance of bonds of the Cabrillo Unified School District in the amount of $99,000,000 ("Bond Measure"); and

WHEREAS, the Board has received from the San Mateo County Registrar of Voters the Canvass and Statement of Results of the Bond Election ("Certificate of Election"); and

WHEREAS, it appears from the Certificate of Election, a copy of which is attached hereto as Exhibit "A," that fifty-five percent (55%) or more of the votes cast on the Bond Measure were in favor of issuing the aforementioned bonds.

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE CABRILLO UNIFIED SCHOOL DISTRICT DOES HEREBY FIND, DETERMINE AND CERTIFY AS FOLLOWS:

Section 1. That entry be made upon the minutes of this meeting that the Bond Measure has been approved by fifty-five (55%) or more of the votes cast at the Bond Election.

Section 2. That all proceedings of the Cabrillo Unified School District in connection with the Bond Election have been accomplished according to law.

Section 3. That the Clerk of the Board is hereby requested to deliver, or arrange for delivery of, a copy of this Resolution to the County Superintendent of Schools and to the Clerk of the Board of Supervisors of San Mateo County.

PASSED AND ADOPTED this day, 9th of August, 2018, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

APPROVED:

_____
President, Board of Education Cabrillo
Unified School District

Attest:

_____
Clerk, Board of Education
Cabrillo Unified School District

EXHIBIT A

CERTIFICATE OF ELECTION FROM SAN MATEO COUNTY

OFFICE OF
ASSESSOR-COUNTY CLERK-RECORDER & ELECTIONS
COUNTY OF SAN MATEO

MARK CHURCH
CHIEF ELECTIONS OFFICER &
ASSESSOR-COUNTY CLERK-RECORDER

RECEIVED
Cabrillo Unified School District
JUL 16 2018
Superintendent's Office

July 3, 2018

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

Subject: Certificate of the Chief Elections Officer for the Statewide Direct Primary Election held on Tuesday, June 5, 2018

Dear Superintendent Yuster,

This is to advise you that we have completed the Official Canvass of the vote and I have certified the election results.

Attached hereto is the official Chief Elections Officer's Certification of the June 5, 2018 Statewide Direct Primary Election.

It has been a pleasure to work with you in conducting this election and I look forward to serving you again in future elections.

Sincerely,

[redacted]

Mark Church

Enclosures

40 Tower Road, San Mateo, CA 94402
P 650.312.5222 **F** 650.312.5348 **email** registrar@smcacre.org **web** www.smcacre.org

CERTIFICATE OF THE CHIEF ELECTIONS OFFICER

In the matter of the CANVASS OF VOTES CAST)
at the STATEWIDE DIRECT PRIMARY ELECTION)
held on June 5, 2018)

I, MARK CHURCH, Chief Elections Officer of the County of San Mateo, State of California, hereby certify:

THAT an election was held within the boundaries of the CABRILLO UNIFIED SCHOOL DISTRICT on Tuesday, June 5, 2018, for the purpose of submitting Measure M to the qualified electors; and I caused to have processed and recorded the votes from the canvass of all ballots cast at said election within the boundaries of the CABRILLO UNIFIED SCHOOL DISTRICT.

I HEREBY FURTHER CERTIFY that the record of votes cast at said election is set forth in Exhibit "A" attached hereto and incorporated herein by reference as though fully set forth at length.

IN WITNESS WHEREOF, I hereunto affix my hand and seal this 3rd day of July, 2018, and file this date with the Superintendent of the CABRILLO UNIFIED SCHOOL DISTRICT.

[redacted]

MARK CHURCH
Chief Elections Officer &
Assessor-County Clerk-Recorder

EXHIBIT A

25	CABRILLO UNIFIED SCHOOL DISTRICT MEASURE M (55% APPROVAL REQUIRED)															
	Registration	Ballots Cast	Turnout (%)		CABRILLO UNIFIED SCHOOL DISTRICT BONDS YES	BONDS NO										
3301	877	487	55.6		255	219										
3303	705	418	59.3		193	206										
3304	1,410	803	57.0		435	351										
3306	835	508	60.8		240	260										
3307	17	9	52.9		6	3										
3310	847	456	53.8		260	187										
3311	827	514	62.2		267	233										
3312	1,200	657	54.8		378	257										
3313	853	493	57.8		249	230										
3314	4	0	0.0		0	0										
3316	50	15	30.0		9	5										
3320	761	446	58.6		256	176										
3321	1,336	730	54.6		376	333										
3323	1,529	807	52.8		475	302										
3324	1,487	767	51.2		369	369										
3325	601	321	53.4		173	136										
3326	1,548	944	61.0		528	388										
3330	47	26	55.3		11	14										
3331	401	166	41.4		88	76										
3340	1,144	594	51.9		1	3										
3360	120	60	50.0		19	40										
3361	93	57	61.3		37	16										
3370	564	313	55.5		182	115										
3372	110	68	61.8		7	2										
3377	32	14	43.8		1	0										
3380	93	55	59.1		19	34										
3381	50	22	44.0		12	8										
3382	0	0	0.0		0	0										
3542	0	0	0.0		0	0										
3543	0	0	0.0		0	0										
3704	13	8	61.5		1	0										
Early Voting Totals	17,566	691	3.9		328	296										
Absentee Totals	17,566	9,067	51.6		4536	3673										
Election Day Totals	17,566	0	0.0		0	0										
Grand Totals	17,566	9,758	55.6		4864	3969										

Early Voting Totals 25	CABRILLO UNIFIED SCHOOL DISTRICT MEASURE M (55% APPROVAL REQUIRED)															
	Registration	Ballots Cast	Turnout (%)		CABRILLO UNIFIED SCHOOL DISTRICT BONDS YES	BONDS NO										
14TH CONGRESSIONAL DISTRICT	10,902	643	5.9		327	292										
18TH CONGRESSIONAL DISTRICT	1,284	46	3.6		1	4										
22ND ASSEMBLY DISTRICT	3,899	211	5.4		94	104										
24TH ASSEMBLY DISTRICT	13,668	480	3.5		234	192										
3RD SUPERVISORIAL DISTRICT	17,566	691	3.9		328	296										
13TH SENATORIAL DISTRICT	17,566	691	3.9		328	296										
BOARD OF EQUALIZATION - DISTRICT	17,566	691	3.9		328	296										
CABRILLO UNIFIED SCHOOL DISTRICT	17,566	691	3.9		328	296										
CITY OF HALF MOON BAY	7,274	247	3.4		143	98										
COUNTY OF SAN MATEO	17,566	691	3.9		328	296										
STATEWIDE DISTRICT	17,566	691	3.9		328	296										
UNINCORPORATED AREA	10,292	444	4.3		185	198										
Early Voting Totals	17,566	691	3.9		328	296										

Absentee Totals 25	CABRILLO UNIFIED SCHOOL DISTRICT MEASURE M (55% APPROVAL REQUIRED)															
	Registration	Ballots Cast	Turnout (%)		CABRILLO UNIFIED SCHOOL DISTRICT BONDS YES	BONDS NO										
14TH CONGRESSIONAL DISTRICT	16,303	8,461	51.9		4517	3634										
18TH CONGRESSIONAL DISTRICT	1,264	606	47.9		18	39										
22ND ASSEMBLY DISTRICT	3,896	2,036	52.2		1047	943										
24TH ASSEMBLY DISTRICT	13,668	7,031	51.4		3489	2730										
3RD SUPERVISORIAL DISTRICT	17,566	9,067	51.6		4536	3673										
13TH SENATORIAL DISTRICT	17,566	9,067	51.6		4536	3673										
BOARD OF EQUALIZATION - DISTRICT	17,566	9,067	51.6		4536	3673										
CABRILLO UNIFIED SCHOOL DISTRICT	17,566	9,067	51.6		4536	3673										
CITY OF HALF MOON BAY	7,274	3,708	51.0		2051	1608										
COUNTY OF SAN MATEO	17,566	9,067	51.6		4536	3673										
STATEWIDE DISTRICT	17,566	9,067	51.6		4536	3673										
UNINCORPORATED AREA	10,292	5,299	51.5		2485	2087										
Absentee Totals	17,566	9,067	51.6		4536	3673										

Grand Totals 25	CABRILLO UNIFIED SCHOOL DISTRICT MEASURE M (55% APPROVAL REQUIRED)															
	Registration	Ballots Cast	Turnout (%)		CABRILLO UNIFIED SCHOOL DISTRICT BONDS YES	BONDS NO										
14TH CONGRESSIONAL DISTRICT	16,302	9,104	55.8		4844	3920										
18TH CONGRESSIONAL DISTRICT	1,264	654	51.7		20	43										
22ND ASSEMBLY DISTRICT	3,866	2,247	57.6		1141	1047										
24TH ASSEMBLY DISTRICT	13,668	7,511	55.0		3723	2922										
3RD SUPERVISORIAL DISTRICT	17,566	9,758	55.6		4864	3969										
13TH SENATORIAL DISTRICT	17,566	9,758	55.6		4864	3969										
BOARD OF EQUALIZATION - DISTRICT	17,566	9,758	55.6		4864	3969										
CABRILLO UNIFIED SCHOOL DISTRICT	17,566	9,758	55.6		4864	3969										
CITY OF HALF MOON BAY	7,274	4,016	55.2		2184	1704										
COUNTY OF SAN MATEO	17,566	9,758	55.6		4864	3969										
STATEWIDE DISTRICT	17,566	9,758	55.6		4864	3969										
UNINCORPORATED AREA	10,292	5,743	55.8		2670	2265										
Early Voting Totals	17,566	691	3.9		328	296										
Absentee Totals	17,566	9,067	51.6		4536	3673										
Election Day Totals	17,566	0	0.0		0	0										
Grand Totals	17,566	9,758	55.6		4864	3969										

CABRILLO UNIFIED SCHOOL DISTRICT
BOARD AGENDA ITEM

BOARD MEETING DATE: August 9, 2018

☒ **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
Joy Dardenelle, Assistant Superintendent, Curriculum and Instruction
Dr. Holly Wade, Assistant Superintendent of Student Support Services
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 action. 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 3100, BP 3551, BP 3553, BP 6146.1, BP 6162.5, and BP 6171 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 laws and/or additional CSBA suggested wordsmithing that could be considered for adoption under action items. These policies are included in the 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.

POLICY GUIDE SHEET
August 2018

Note: Descriptions below identify revisions made to CSBA's sample board policies, administrative regulations, board bylaws, and/or exhibits. Editorial changes have also been made.

BP 3100 - Budget
(BP revised)

Policy updated to reflect **NEW LAW (SB 751)** which provides that, if the amount of monies in the state Public School System Stabilization Account is three percent or more of the combined total of general fund revenues appropriated for school districts and allocated local proceeds of taxes, the district's combined assigned or unassigned ending general fund balance must not exceed 10 percent of those funds in the immediately following fiscal year, unless the district is a basic aid district, is a district with average daily attendance of 2,500 or less, or is exempted by the county superintendent of schools under extraordinary fiscal circumstances.

BP/AR 3551 - Food Service Operations/Cafeteria Fund
(BP/AR revised)

Policy updated to reflect **NEW LAW (SB 250)** which requires districts to make their meal charge policy public and ensure that students with unpaid meal fees are not shamed or treated differently than other students. Section on "Procurement of Foods, Equipment, and Supplies" reflects **NEW LAW (SB 730)** which requires the California Department of Education (CDE) to provide information about the Buy American provision, **NEW LAW (AB 822)** which requires a preference for California-grown agricultural products with specified exceptions, and **NEW LAW (SB 544)** which clarifies that procurements in federally funded nutrition programs are subject to the procurement standards of the federal Uniform Guidance. Regulation updated to reflect provisions of SB 250 which require districts to notify parents/guardians within 10 days of a negative balance in their child's school meal account and to exhaust all options to enroll the student in the free and reduced-price meal program if he/she is eligible. Regulation also adds new section reflecting **NEW LAW (SB 557)** which authorizes donation of unused, unopened foods to a food bank or other nonprofit charitable organization.

BP/AR 3553 - Free and Reduced Price Meals
(BP/AR revised)

Policy updated to reflect **NEW LAW (SB 138)** which requires districts to apply by September 1, 2018, for a federal universal meal service for "very high poverty schools," as defined, for the purpose of providing breakfast and/or lunch free of charge to all students enrolled at the school. An exception exists for districts whose board adopts a resolution stating the district is unable to comply due to fiscal hardship. Regulation updated to reflect a provision of SB 138 which requires direct certification of students' eligibility for free or reduced-price meals based on their Medi-Cal participation. In both BP and AR, section related to confidentiality and allowable purposes for sharing students' free and reduced-price meal eligibility information revised to reflect the elimination of Title I program improvement.

BP 6146.1 - High School Graduation Requirements
(BP revised)

Policy updated to reflect **NEW LAW (AB 830)** which repeals the requirement to pass the high school exit exam as a condition of graduation and **NEW LAW (AB 365)** which exempts children of military families from locally established graduation requirements under certain conditions.

BP 6162.5 - Student Assessment
(BP revised)

Policy updated to reflect **NEW LAW (AB 1035)** which addresses the use and purpose of interim and formative assessments that are part of the California Assessment of Student Performance and Progress, prohibits their use for high-stakes purposes as defined, and requires that teachers who administer the assessments have access to all pertinent functions and information.

BP/AR 6171 - Title I Programs
(BP revised)

Policy updated to address (1) the requirement to use federal Title I funds to supplement, not supplant, funds available from state and local sources; (2) use of the district's local control and accountability plan to fulfill requirements for the Title I local educational agency plan; and (3) methods for demonstrating the comparability of services between Title I and non-Title I schools. Regulation updated to reflect amendments by the Every Student Succeeds Act related to school wide programs, targeted assistance programs, and participation by private school students.

Cabrillo USD
Board Policy
Budget

BP 3100
Business and Noninstructional Operations

The Governing Board recognizes its critical responsibility for adopting a sound budget for each fiscal year which is aligned with the district's vision, goals, and priorities. The district budget shall guide decisions and actions throughout the year and shall serve as a tool for monitoring the fiscal health of the district.

(cf. 0000 - Vision)
(cf. 0200 - Goals for the School District)
(cf. 0400 - Comprehensive Plans)
(cf. 0460 - Local Control and Accountability Plan)
(cf. 3300 - Expenditures and Purchases)
(cf. 3460 - Financial Reports and Accountability)
(cf. 9000 - Role of the Board)

The district budget shall show a complete plan and itemized statement of all proposed expenditures and all estimated revenues for the following fiscal year, together with a comparison of revenues and expenditures for the current fiscal year. The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Government Code 7900-7914. (Education Code 42122)

Budget Development and Adoption Process

In order to provide guidance in the development of the budget, the Board shall annually establish budget priorities based on identified district needs and goals and on realistic projections of available funds.

The Superintendent or designee shall oversee the preparation of a proposed district budget for approval by the Board and shall involve appropriate staff in the development of budget projections.

The Board shall hold a public hearing on the proposed budget in accordance with Education Code 42103 and 42127.

(cf. 9320 - Meetings and Notices)
(cf. 9322 - Agenda/Meeting Materials)
(cf. 9323 - Meeting Conduct)

The Board shall adopt the district budget on or before July 1 of each year. (Education Code 42127)

At a public meeting held on a date after the public hearing on the budget, the Board shall, ***following its adoption of the LCAP or an annual update to the LCAP, adopt the budget.*** ~~adopt the budget following its adoption of the LCAP or an annual update to the LCAP at the same meeting.~~ The budget shall include the expenditures necessary to implement the LCAP or the annual update to the LCAP. (Education Code 42127, 52062)

The budget that is formally adopted by the Board shall adhere to the state's Standardized Account Code Structure as prescribed by the Superintendent of Public Instruction. (Education Code 42126, 42127)

The Superintendent or designee may supplement this format with additional information as necessary to effectively communicate the budget to the Board, staff, and public.

No later than five days after the Board adopts the district budget or by July 1, whichever occurs first, the Board shall file with the County Superintendent of Schools the adopted district budget and supporting data. The budget and supporting data shall be maintained and made available for public review. (Education Code 42127)

(cf. 1340 - Access to District Records)

If the County Superintendent disapproves or conditionally approves the district's budget, the Board shall review and respond to his/her recommendations at a public meeting on or before October 8. The response shall include any revisions to the adopted budget and any other proposed actions to be taken as a result of those recommendations. (Education Code 42127)

Budget Advisory Committee

The Superintendent or designee may appoint a budget advisory committee composed of staff, Board representatives, and/or members of the community.

The committee shall submit recommendations during the budget development process and its duties shall be assigned each year based on district needs. All recommendations of the committee shall be advisory only and shall not be binding on the Board.

(cf. 1220 - Citizen Advisory Committees)
(cf. 2230 - Representative and Deliberative Groups)
(cf. 3350 - Travel Expenses)
(cf. 9130 - Board Committees)
(cf. 9140 - Board Representatives)

Budget Criteria and Standards

The Superintendent or designee shall develop a district budget in accordance with state criteria and standards specified in 5 CCR 15440-15450 as they relate to projections of average daily attendance (ADA), enrollment, ratio of ADA to enrollment, local control funding formula revenue, salaries and benefits, other revenues and expenditures, facilities maintenance, deficit spending, unrestricted general fund balance, and reserves.

In addition, he/she shall provide the supplemental information specified in 5 CCR 15451 which addresses the methodology and budget assumptions used, contingent liabilities, use of one-time revenues for ongoing expenditures, use of ongoing revenues for one-time expenditures, contingent revenues, contributions, long-term commitments, unfunded liabilities, status of collective bargaining agreements, the LCAP, and LCAP expenditures. (Education Code 33128, 33128.3, 33129, 42127.01; 5 CCR 15440-15451)

The district budget shall provide for increasing or improving services for unduplicated students at least in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated students. *Unduplicated students* are students who are eligible for free or reduced-price meals, English learners, and/or foster youth. (Education Code 42238.07; 5 CCR 15496)

(cf. 3553 - Free and Reduced Price Meals)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6174 - Education for English Language Learners)

The Board may establish other budget assumptions or parameters which may take into consideration the stability of funding sources, legal requirements and constraints on the use of funds, anticipated increases and/or decreases in the cost of services and supplies, program requirements, and any other factors necessary to ensure that the budget is a realistic plan for district revenues and expenditures.

(cf. 2210 - Administrative Discretion Regarding Board Policy)
(cf. 3110 - Transfer of Funds)

Fund Balance

The district shall classify fund balances in compliance with Governmental Accounting Standards Board (GASB) Statement 54, as follows:

1. *Nonspendable fund balance* includes amounts that are not expected to be converted to cash, such as resources that are not in a spendable form (e.g., inventories and prepaids) or that are legally or contractually required to be maintained intact.

2. *Restricted fund balance* includes amounts constrained to specific purposes by their providers or by law.

3. *Committed fund balance* includes amounts constrained to specific purposes by the Board.

For this purpose, all commitments of funds shall be approved by a majority vote of the Board. The constraints shall be imposed no later than the end of the reporting period (June 30), although the actual amounts may be determined subsequent to that date but prior to the issuance of the financial statements.

4. Assigned fund balance includes amounts which are intended for a specific purpose but do not meet the criteria to be classified as restricted or committed.

The Board delegates authority to assign funds to the assigned fund balance to the Superintendent and authorizes the assignment of such funds to be made any time prior to the issuance of the financial statements. The Superintendent may further delegate the authority to assign funds at his/her discretion.

5. *Unassigned fund balance* includes amounts that are available for any purpose.

When multiple types of funds are available for an expenditure, the district shall first utilize funds from the restricted fund balance as appropriate, then from the committed fund balance, then from the assigned fund balance, and lastly from the unassigned fund balance.

The Board intends to maintain a minimum assigned and unassigned fund balance in an amount the Board deems sufficient to maintain fiscal solvency and stability and to protect the district against unforeseen circumstances.

If the assigned and unassigned fund balance falls below the level set by the Board due to an emergency situation, unexpected expenditures, or revenue shortfalls, the Board shall develop a plan to recover the fund balance which may include dedicating new unrestricted revenues, reducing expenditures, and/or increasing revenues or pursuing other funding sources.

Reserve Balance

The district budget shall include a minimum reserve balance for economic uncertainties that is consistent with the percentage or amount specified in 5 CCR 15450.

In any year that the district is notified by the Superintendent of Public Instruction that the amount of monies in the state Public School System Stabilization Account equals or exceeds three percent of the combined total of general fund revenues appropriated for school district and allocated local proceeds of taxes, the district budget shall not contain a combined assigned or unassigned ending general fund balance that is in excess of 10 percent of these funds. (Education Code 41202, 42127.01)

Long-Term Financial Obligations

The district's current-year budget and multiyear projections shall include adequate provisions for addressing the district's long-term financial obligations, including, but not limited to, long-term obligations resulting from collective bargaining agreements, financing of facilities projects, unfunded or future liability for retiree benefits, and accrued workers' compensation claims.

(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 7210 - Facilities Financing)
(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

The Board shall approve a plan for meeting the district's long-term obligations to fund nonpension, other postemployment benefits (OPEBs). This plan shall include a specific funding strategy and the method that will be used to finance the district's annual fiscal obligations for such benefits in a manner that continually reduces the deficit to the district to the extent possible. The Board reserves the authority to review and amend the funding strategy as necessary to ensure that it continues to serve the best interests of the district and maintains flexibility to adjust for changing budgetary

considerations.

When the Superintendent or designee presents a report to the Board on the estimated accrued but unfunded cost of OPEBs, the Board shall disclose, as a separate agenda item at the same meeting, whether or not it will reserve a sufficient amount of money in its budget to fund the present value of the benefits of existing retirees and/or the future cost of employees who are eligible for benefits in the current fiscal year. (Education Code 42140)

When the Superintendent or designee presents a report to the Board on the estimated accrued but unfunded cost of workers' compensation claims, the Board shall disclose, as a separate agenda item at the same meeting, whether or not it will reserve in the budget sufficient amounts to fund the present value of accrued but unfunded workers' compensation claims or if it is otherwise decreasing the amount in its workers' compensation reserve fund. The Board shall annually certify to the County Superintendent the amount, if any, that it has decided to reserve in the budget for these costs. The Board shall submit to the County Superintendent any budget revisions that may be necessary to account for this budget reserve. (Education Code 42141)

Budget Amendments

No later than 45 days after the Governor signs the annual Budget Act, the Superintendent or designee shall make available for public review any revisions in budgeted revenues and expenditures which occur as a result of the funding made available by that Budget Act. (Education Code 42127)

Whenever revenues and expenditures change significantly throughout the year, the Superintendent or designee shall recommend budget amendments to ensure accurate projections of the district's net ending balance. When final figures for the prior-year budget are available, this information shall be used as soon as possible to update the current-year budget's beginning balance and projected revenues and expenditures.

In addition, budget amendments shall be submitted for Board approval as necessary when collective bargaining agreements are accepted, district income declines, increased revenues or unanticipated savings are made available to the district, program proposals are significantly different from those approved during budget adoption, interfund transfers are needed to meet actual program expenditures, and/or other significant changes occur that impact budget projections.

Legal Reference:
EDUCATION CODE
1240 Duties of county superintendent of schools
33127-33131 Standards and criteria for local budgets and expenditures
42103 Public hearing on proposed budget; requirements for content of proposed budget
42122-42129 Budget requirements
42130-42134 Financial certifications
42140-42141 Disclosure of fiscal obligations
42238-42251 Apportionments to districts, especially:
42238.01-42238.07 Local control funding formula
42602 Use of unbudgeted funds
42610 Appropriation of excess funds and limitation thereon
45253 Annual budget of personnel commission
45254 First year budget of personnel commission
52060-52077 Local control and accountability plan

GOVERNMENT CODE
7900-7914 Appropriations limit
CODE OF REGULATIONS, TITLE 5
15060 Standardized account code structure
15440-15451 Criteria and standards for school district budgets
15494-15496 Local control funding formula, expenditures

Management Resources:
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
California School Accounting Manual
New Requirements for Reporting Fund Balance in Governmental Funds, January 7, 2011
FISCAL CRISIS AND MANAGEMENT ASSISTANCE TEAM PUBLICATIONS
Fiscal Oversight Guide for AB 1200, AB 2756 and Subsequent Related Legislation, September 2006
GOVERNMENT FINANCE OFFICERS ASSOCIATION
Best Practice: Appropriate Level of Unrestricted Fund Balance in the General Fund, 2009
GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENTS
Statement 54, Fund Balance Reporting and Governmental Fund Type Definitions, March 2009
Statement 45, Accounting and Financial Reporting by Employers for Post-employment Benefits Other Than Pensions, June 2004
Statement 34, Basic Financial Statements and Management's Discussion and Analysis - For State and Local Governments, June 1999
WEB SITES
CSBA: http://www.csba.org
Association of California School Administrators: http://www.acsa.org
California Department of Education, Finance and Grants: http://www.cde.ca.gov/fg
California Department of Finance: http://www.dof.ca.gov
Fiscal Crisis and Management Assistance Team: http://www.fcmat.org
Government Finance Officers Association: http://www.gfoa.org
Governmental Accounting Standards Board: http://www.gasb.org
School Services of California, Inc.: http://www.sscal.com

Policy: 3100
Adopted: February 12, 2009
Revised: October 14, 2010
Revised: June 30, 2011
Revised: December 12, 2013
Revised: May 14, 2015
Revised: April 7, 2016
Revised: August 9, 2018

CABRILLO UNIFIED SCHOOL DISTRICT
Half Moon Bay, California

Cabrillo USD

Board Policy

Food Service Operations/Cafeteria Fund

BP 3551
Business and Noninstructional Operations

The Governing Board intends that, school food services shall be a self-supporting, nonprofit program. To ensure program quality and increase cost effectiveness, the Superintendent or designee shall centralize and direct the purchasing of food and supplies, the planning of menus, and the auditing of all food service accounts for the district.

(cf. 3100 - Budget)
(cf. 3300 - Expenditures and Purchases)
(cf. 3311 - Bids)
(cf. 3550 - Food Service/Child Nutrition Program)
(cf. 3552 - Summer Meal Program)
(cf. 5030 - Student Wellness)

The Superintendent or designee shall ensure that all food service personnel possess appropriate qualifications and receive ongoing professional development related to the effective management and implementation of the district's food service program.

(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

At least once each year, food service administrators, other appropriate personnel who conduct or oversee administrative procedures, and other food service personnel shall receive training provided by the California Department of Education (CDE). (42 USC 1776)

Meal Sales

Meals may be sold to students, district employees, Board members, and employees or members of the fund or association maintaining the cafeteria. (Education Code 38082)

In addition, meals may be sold to nonstudents, including parents/guardians, volunteers, students' siblings, or other individuals, who are on campus for a legitimate purpose. Any meals served to nonstudents shall not be subsidized by federal or state reimbursements, food service revenues, or U.S. Department of Agriculture (USDA) foods.

Meal prices, as recommended by the Superintendent or designee and approved by the Board, shall be based on the costs of providing food services and consistent with Education Code 38084 and 42 USC 1760.

The Superintendent or designee shall establish strategies and procedures for the collection of meal payments, including delinquent meal payments. Such procedures shall conform with 2 CFR 200.426 and any applicable CDE guidance. The Superintendent or designee shall clearly

communicate these procedures to students and parents/guardians, and shall make this policy and the accompanying administrative regulation available to the public.

The Superintendent or designee shall ensure that a student whose parent/guardian has unpaid school meal fees is not overtly identified, shamed, treated differently, or served a meal that differs from the meal served to other students. (Education Code 49557.5)

Students who are enrolled in the free or reduced-price meal program shall receive meals free of charge or at a reduced price in accordance with law, Board policy, and administrative regulation. ***Such students shall not be overtly identified or treated differently from other students.***

(cf. 0410 - Nondiscrimination in District Programs and Activities)
(cf. 3553 - Free and Reduced Price Meals)

~~Meals may be sold to nonstudents, including parents/guardians, volunteers, students' siblings, or other individuals, who are on campus for a legitimate purpose. Any meals served to nonstudents shall not be subsidized by federal or state reimbursements, food service revenues, or U.S. Department of Agriculture (USDA) foods.~~

Cafeteria Fund

The Superintendent or designee shall establish a cafeteria fund independent of the district's general fund.

The wages, salaries, and benefits of food service employees shall be paid from the cafeteria fund. (Education Code 38103)

The Superintendent or designee shall ensure that state and federal funds provided through school meal programs are allocated only for purposes related to the operation or improvement of food services and reasonable and necessary indirect program costs as allowed by law.

(cf. 3230 - Federal Grant Funds)
(cf. 3400 - Management of District Assets/Accounts)
(cf. 3460 - Financial Reports and Accountability)

Contracts with Outside Services

With Board approval, the district may enter into a contract for food service consulting services or management services in one or more district schools. (Education Code 45103.5; 42 USC 1758; 7 CFR 210.16)

(cf. 3312 - Contracts)
(cf. 3600 - Consultants)

Procurement of Foods, Equipment and Supplies

To the maximum extent practicable, foods purchased for use in school meals by the district or by any entity purchasing food on its behalf shall be domestic commodities or products. Domestic commodity or product means an agricultural commodity that is produced in the United States and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. (42 USC 1760; 7 CFR 210.21)

A nondomestic food product may be purchased for use in the district's food service program only as a last resort when the product is not produced or manufactured in the United States in sufficient and reasonable quantities of a satisfactory quality, or when competitive bids reveal the costs of a United States product are significantly higher than the nondomestic product. In such cases, the Superintendent or designee shall retain documentation justifying the use of the exception.

Furthermore, the district shall accept a bid or price for an agricultural product grown in California before accepting a bid or price for an agricultural product grown outside the state, if the quality of the California-grown product is comparable and the bid or price does not exceed the lowest bid or price of a product produced outside the state. (Food and Agriculture Code 58595)

Bid solicitations and awards for purchases of equipment, materials, or supplies in support of the district's child nutrition program, or for contracts awarded pursuant to Public Contract Code 2000, shall be consistent with the federal procurement standards in 2 CFR 200.318-200.326. Awards shall be let to the most responsive and responsible party. Price shall be the primary consideration, but not the only determining factor, in making such an award. (Public Contract Code 20111)

Program Monitoring and Evaluation

The Superintendent or designee shall present to the Board, at least annually, financial reports regarding revenues and expenditures related to the food service program.

The Superintendent or designee shall provide all necessary documentation required for the Administrative Review conducted by the CDE to ensure compliance of the district's food service program with federal requirements related to maintenance of the nonprofit school food service account, ***meal charges,*** paid lunch equity, revenue from nonprogram goods, indirect costs, and USDA foods.

(cf. 3555 - Nutrition Program Compliance)

Legal Reference:

EDUCATION CODE
38080-38086 Cafeteria, establishment and use
38090-38095 Cafeterias, funds and accounts
38100-38103 Cafeterias, allocation of charges
42646 Alternate payroll procedure

45103.5 Contracts for management consulting services; restrictions
49490-49493 School breakfast and lunch programs
49500-49505 School meals
49554 Contract for services
HEALTH AND SAFETY CODE
113700-114437 California Retail Food Code
CODE OF REGULATIONS, TITLE 5
15550-15565 School lunch and breakfast programs
UNITED STATES CODE, TITLE 42
1751-1769j School lunch programs
1771-1791 Child nutrition, including:
1773 School breakfast program
CODE OF FEDERAL REGULATIONS, TITLE 2
225 Cost Principles for State, Local, and Indian Tribal Governments
CODE OF FEDERAL REGULATIONS, TITLE 7
210.1-210.31 National School Lunch Program
220.1-220.21 National School Breakfast Program
250.1-250.70 USDA foods

Management Resources:
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
California School Accounting Manual
Food Distribution Program Administrative Manual
Cafeteria Funds--Allowable Uses, Management Bulletin NSD-SNP-07-2013, May 2013
Paid Lunch Equity Requirement, Management Bulletin USDA-SNP-16-2012, October 2012
Storage and Inventory Management of United States Department of Agriculture (USDA) Donated Foods, Management Bulletin USDA-FDP-02-2010, August 2010
Clarification for the Use of Alternate Meals in the National School Lunch and School Breakfast Programs; and the Handling of Unpaid Meal Charges, Management Bulletin USDA-SNP-01-2008, February 2008
Adult and Sibling Meals in the National School Lunch and School Breakfast Programs, Management Bulletin 00-111, July 2000
U.S. DEPARTMENT OF AGRICULTURE PUBLICATIONS
Financial Management of the School Meal Programs, Correspondence, August 30, 2013
Indirect Costs: Guidance for State Agencies and School Food Authorities, 2011
U.S. DEPARTMENT OF EDUCATION GUIDANCE
FAQs About School Meals
WEB SITES
California Department of Education, Nutrition Services Division: http://www.cde.ca.gov/ls/nu
California School Nutrition Association: http://www.calsna.org
U.S. Department of Agriculture, Food and Nutrition Service: http://www.fns.usda.gov/cnd
U.S. Department of Education: http://www.ed.gov

Policy: 3551
Adopted: December 11, 2008
Revised: February 11, 2014
Revised: August 9, 2018

CABRILLO UNIFIED SCHOOL DISTRICT
Half Moon Bay, California

Cabrillo USD

Board Policy

Business and Noninstructional Operations

BP 3553

Free And Reduced Price Meals

The Governing Board recognizes that adequate nutrition is essential to the development, health, and learning of all students. The Superintendent or designee shall facilitate and encourage the participation of students from low-income families in the district's food service program.

(cf. 3551 - Food Service Operations/Cafeteria Fund)
(cf. 3552 - Summer Meal Program)
(cf. 5030 - Student Wellness)
(cf. 5148 - Child Care and Development)
(cf. 5148.2 - Before/After School Programs)
(cf. 6177 – Summer Learning Programs)

The district shall provide at least one nutritionally adequate meal each school day, free of charge or at a reduced price, for students whose families meet federal eligibility criteria. (Education Code 49550, 49552)

To provide optimal nutrition and reduce the administrative burden of food service operations, the Superintendent or designee shall assess the eligibility of district schools to provide breakfast and/or lunch free of charge to all students at the school under a federally funded universal meal service provision, such as Provision 2 or the Community Eligibility Provision, pursuant to 42 USC 1759a.

If any district school meets the criteria for a "very high poverty school" through its eligibility for the federal Community Eligibility Provision reimbursement rate pursuant to 42 USC 1759a, the district shall apply to the California Department of Education (CDE) to operate a universal meal service, unless the Board adopts a resolution stating that the district is unable to comply with this requirement due to fiscal hardship. The resolution shall be part of the public agenda for at least two consecutive Board meetings, first as an information item and then as an action item. The Board shall reconsider the resolution at least once every four years. (Education Code 49564; 42 USC 1759a)

The Superintendent or designee shall ensure that meals provided through the free and reduced-price meals program meet applicable state and/or federal nutritional standards in accordance with law, Board policy, and administrative regulation.

(cf. 3550 - Food Service/Child Nutrition Program)

~~Schools participating in the Special Milk Program pursuant to 42 USC 1772 shall provide milk at no charge to students who meet federal eligibility criteria for free or reduced-price meals.~~

~~The Board shall approve, and shall submit to the California Department of Education for approval, a plan that ensures that students eligible to receive free or reduced-price meals and milk are not treated differently from other students. (Education Code 49557)~~

~~*(cf. 0410 - Nondiscrimination in District Programs and Activities)*~~
~~*(cf. 3555 - Nutrition Program Compliance)*~~
~~*(cf. 5145.3 - Nondiscrimination/Harassment)*~~

Confidentiality/Release of Records

All applications and records related to eligibility for the free and reduced-price meals program shall be confidential and may not be released except as provided by law and authorized by the Board or pursuant to a court order.

(cf. 5125 - Student Records)

The Board authorizes designated employees to use individual records pertaining to student eligibility for the free and reduced-price meals program for the purposes of: (Education Code 49558)

1. Disaggregation of academic achievement data

(cf. 6162.51 - State Achievement Tests)

2. Identification of students eligible for ***services under the federal Elementary and Secondary Education Act pursuant to 20 USC 6301-6576*** ~~alternative supports in any school identified as a Title I program improvement school~~

(cf. 6171 - Title I Programs)

If a student transfers from the district to another district, charter school, county office of education program, or private school, the Superintendent or designee may share the student's meal eligibility information to the other educational agency to assist in the continuation of the student's meal benefits.

The Superintendent or designee may release the name and eligibility status of a student participating in the free or reduced-price meal program to another school district, charter school, or county office of education that is serving a student living in the same household for purposes related to program eligibility and data used in local control funding formula calculations. (Education Code 49558)

The Superintendent or designee may release the name and eligibility status of a student participating in the free or reduced-price meal program to the Superintendent of Public Instruction for purposes of determining allocations under the local control funding formula and for assessing accountability of that funding. (Education Code 49558)

The Superintendent or designee may release information on the school lunch program application to the local agency that determines eligibility for participation in the Medi-Cal program if the student has been approved for free meals or, if included in the agreement with the local agency, for reduced-price meals. He/she also may release information on the school lunch application to the local agency that determines eligibility for CalFresh or another nutrition assistance program authorized under 7 CFR 210.1 if the student has been approved for free or reduced-price meals. Information may be released for these purposes only if the student's parent/guardian consents to the sharing of information and the district has entered into a memorandum of understanding with the local agency which, at a minimum, includes the roles and responsibilities of the district and local agency and the process for sharing the information. After sharing information with the local agency for purposes of determining eligibility for that program, no further information shall be shared unless otherwise authorized by law. (Education Code 49557.2, 49557.3, 49558)

(cf. 5141.6 - School Health Services)

Legal Reference:
EDUCATION CODE
48980 Notice at beginning of term
49430-49434 Pupil Nutrition, Health, and Achievement Act of 2001
49490-49494 School breakfast and lunch programs
49500-49505 School meals
49510-49520 Nutrition
49530-49536 Child Nutrition Act of 1974
49547-49548.3 Comprehensive nutrition service
49550-49562 Meals for needy students
CODE OF REGULATIONS, TITLE 5
15510 Mandatory meals for needy students
15530-15535 Nutrition education
15550-15565 School lunch and breakfast programs
UNITED STATES CODE, TITLE 20
1232g Federal Educational Rights and Privacy Act
6301-6514 Title I programs
UNITED STATES CODE, TITLE 42
1751-1769j School lunch program
1771-1791 Child nutrition, especially:
1773 School breakfast program
CODE OF FEDERAL REGULATIONS, TITLE 7
210.1-210.31 National School Lunch Program
220.10-220.21 National School Breakfast Program
245.1-245.13 Determination of eligibility for free and reduced-price meals and free milk
WELFARE AND INSTITUTIONS CODE
14005.41 Basic health care

Management Resources:
CSBA PUBLICATIONS
Monitoring for Success: A Guide for Assessing and Strengthening Student Wellness Policies, 2012
Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide, 2012

CALIFORNIA DEPARTMENT OF EDUCATION MANAGEMENT BULLETINS
NSD SNP-12-2015 Updated Guidance on Sharing of School Meal Applications and the Passing of Assembly Bill 1599, July 2015
USDA-SNP-07-2010 Change in Free and Reduced-Price Meal Application Approval Process, September 2010
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Feed More Kids, Improve Program Participation
Direct Certification Implementation Checklist, May 2008
U.S. DEPARTMENT OF AGRICULTURE PUBLICATIONS
Eligibility Manual for School Meals: Determining and Verifying Eligibility, July 2015
Provision 2 Guidance: National School Lunch and School Breakfast Programs, Summer 2002
WEB SITES
CSBA: http://www.csba.org
California Department of Education, Nutrition Services Division: http://www.cde.ca.gov/ls/nu
California Healthy Kids Resource Center: http://www.californiahealthykids.org
California Project LEAN (Leaders Encouraging Activity and Nutrition): http://www.californiaprojectlean.org
U.S. Department of Agriculture, Food and Nutrition Service: http://www.fns.usda.gov/cnd

Policy: 3553
Adopted: December 11, 2008
Revised: November 17, 2011
Revised: May 12, 2016
Revised: May 11, 2017
Revised: August 9, 2018

CABRILLO UNIFIED SCHOOL DISTRICT
Half Moon Bay, California

Cabrillo USD

Board Policy

High School Graduation Requirements

BP 6146.1
Instruction

The Governing Board desires to prepare all students to obtain a high school diploma to enable them to take advantage of opportunities for postsecondary education and employment.

(cf. 5127 - Graduation Ceremonies and Activities)
(cf. 5147 - Dropout Prevention)
(cf. 5149 - At-Risk Students)
(cf. 6143 - Courses of Study)
(cf. 6146.3 - Reciprocity of Academic Credit)

Course Requirements

To obtain a high school diploma, students shall complete at least the following courses in grades 9-12, with each course being one year unless otherwise specified:

1. Four courses in English, 40 credits (Education Code 51225.3)

(cf. 6142.91 - Reading/Language Arts Instruction)

2. Three courses in mathematics, 30 credits (Education Code 51225.3)

At least one mathematics course, or a combination of the two mathematics courses required for completion in grades 9-12, shall meet or exceed state academic content standards for Algebra I. (Education Code 51224.5)

Completion, prior to grade 9, of algebra coursework that meets or exceeds state academic content standards shall satisfy the algebra coursework requirement, but shall not exempt a student from the requirement to complete three mathematics courses in grades 9-12. (Education Code 51224.5)

Students may be awarded up to one mathematic course credit for successful completion of an approved computer course that is classified as a category "c" course based on the "a-g" course requirements for college admission. (Education Code 51225.3, 51225.35)

~~*(cf. 6011 - Academic Standards)*~~
(cf. 6142.92 - Mathematics Instruction)
(cf. 6152.1 - Placement in Mathematics Courses)

3. Two courses in science, including biological and physical sciences, 20 credits (Education Code 51225.3)

(cf. 6142.93 - Science Instruction)

4. Four courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics; and a one-semester course in economics, 40 credits (Education Code 51225.3)

(cf. 6142.3 - Civic Education)
(cf. 6142.93 - History-Social Science Instruction)

5. One course in visual or performing arts, foreign language, including American Sign Language, or career technical education *(CTE)*, 10 credits (Education Code 51225.3)

To be counted towards meeting graduation requirements, a course in career technical education shall be aligned to the career technical model curriculum standards and framework adopted by the State Board of Education.

(cf. 6142.2 - World/Foreign Language Instruction)
(cf. 6142.6 - Visual and Performing Arts Education)
(cf. 6178 - Career Technical Education)
(cf. 6178.2 - Regional Occupational Center/Program)

6. Two courses in physical education, unless the student has been otherwise exempted pursuant to other sections of the Education Code, 20 credits (Education Code 51225.3)

(cf. 6142.7 - Physical Education and Activity)

7. Seven courses of electives, 70 credits

The total number of credits required to receive a diploma shall be 230.

Because the prescribed course of study may not accommodate the needs of some students, the Board shall provide alternative means for the completion of prescribed courses in accordance with law.

(cf. 6146.11 - Alternative Credits Toward Graduation)
(cf. 6146.2 - Certificate of Proficiency/High School Equivalency)

The Superintendent or designee shall exempt or waive specific course requirements for foster youth or children of military families in accordance with Education Code 51225.3 and 49701.

(cf. - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education for Children of Military Families)

Exemptions and Waivers

A foster youth, homeless student, former juvenile court school student, or child of a military family who transfers into the district any time after completing his/her second year of high school shall be required to complete all graduation requirements specified in Education Code 51225.3 but shall be exempt from any additional district-adopted graduation requirements, unless the Superintendent or designee makes a finding that the student is reasonably able to complete the requirements in time to graduate by the end of his/her fourth year of high school. Within 30 days of the transfer, any such student shall be notified of the availability of the exemption and whether he/she qualifies for it. (Education Code 51225.1)

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 5145.6 - Parental Notifications)
(cf. 6173 - Education for Homeless Children)
(cf. 6173.1 - Education for Foster Youth)
(cf. 6173.2 - Education of Children of Military Families)
(cf. 6173.3 - Education for Juvenile Court School Students)

Retroactive Diplomas

~~Until July 31, 2018,~~ ***A***ny student who completed grade 12 in the 2003-2004 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination shall be granted a high school diploma. (Education Code 60851.6)

The district may retroactively grant a high school diploma to a former student who was interned by order of the federal government during World War II or who is an honorably discharged veteran of World War II, the Korean War, or the Vietnam War, provided that he/she was enrolled in a district school immediately preceding the internment or military service and he/she did not receive a diploma because his/her education was interrupted due to the internment or military service. A deceased former student who satisfies these conditions may be granted a retroactive diploma to be received by his/her next of kin. (Education Code 51430)

In addition, the district may grant a diploma to a veteran who entered the military service of the United States while he/she was a district student in grade 12 and who had completed the first half of the work required for grade 12. (Education Code 51440)

Legal Reference:
EDUCATION CODE
35186 Williams Uniform Complaint Procedures
37252 Supplemental instructional programs
37254 Supplemental instruction based on failure to pass exit exam by end of grade 12
37254.1 Required student participation in supplemental instruction
47612 Enrollment in charter school
48200 Compulsory attendance
48412 Certificate of proficiency
48430 Continuation education schools and classes

48645.5 Acceptance of coursework
48980 Required notification at beginning of term
49701 Interstate Compact on Educational Opportunity for Military Children
51224 Skills and knowledge required for adult life
51224.5 Algebra instruction
51225.3 Requirements for graduation
51225.5 Honorary diplomas; foreign exchange students
51228 Graduation requirements
51240-51246 Exemptions from requirements
51250-51251 Assistance to military dependents
51410-51412 Diplomas
51420-51427 High school equivalency certificates
51450-51455 Golden State Seal Merit Diploma
51745 Independent study restrictions
52378 Supplemental school counseling program
56390-56392 Recognition for educational achievement, special education
60850-60859 High school exit examination
66204 Certification of high school courses as meeting university admissions criteria
CODE OF REGULATIONS, TITLE 5
1600-1651 Graduation of students from grade 12 and credit toward graduation
COURT DECISIONS
O'Connell v. Superior Court (Valenzuela), (2006) 141 Cal.App.4th 1452
Management Resources:
WEB SITES
CSBA: http://www.csba.org
California Department of Education, High School: http://www.cde.ca.gov/ci/gs/hs
University of California, List of Approved a-g Courses:
http://www.universityofcalifornia.edu/admissions/freshman/requirements

Policy: 6146.1
Adopted: December 11, 2008
Revised: April 15, 2014
Revised: August 11, 2016
Revised: August 9, 2018

CABRILLO UNIFIED SCHOOL DISTRICT
Half Moon Bay, California

Cabrillo USD
Board Policy
Instruction

BP 6162.5

STUDENT ASSESSMENT

The Governing Board recognizes that student assessments are an important instructional and accountability tool. ***To obtain the most accurate evaluation of student performance, the district shall use a variety of measures, including district, state, and or national assessments.***

(cf. 6162.51 – State Academic Achievement Tests)

Assessment data shall be used to help determine individual students' progress, mastery of academic standards, appropriate placement in district programs, and/or eligibility for graduation. In addition, summary data on student assessment results shall be used by the district to identify and review student achievement goals in the district's local control and accountability plan, evaluate district educational programs in order to identify needed improvements, and as appropriate, evaluate staff performance.

(cf. 0460 - Local Control and Accountability Plan)
(cf. 0500 - Accountability)
(cf. 2140 - Evaluation of the Superintendent)
(cf. 4115 - Evaluation/Supervision)
(cf. 4315 - Evaluation/Supervision)
(cf. 5121 - Grades/Evaluation of Student Achievement)
(cf. 5123 - Promotion/Acceleration/Retention)
(cf. 6011 - Academic Standards)
(cf. 6142.7 - Physical Education and Activity)
(cf. 6162.51 - State Academic Achievement Tests)
(cf. 6162.52 - High School Exit Examination)
(cf. 6190 - Evaluation of the Instructional Program)

~~To obtain the most accurate evaluation of student performance, the district shall use a variety of measures, including district, state, and/or national assessments. As appropriate, assessment results shall be disaggregated by student subgroup, classroom, grade level, or school site to allow for critical analysis of student needs.~~

~~*(cf. 3553 - Free and Reduced Price Meals)*~~

In selecting or developing a district assessment, the Superintendent or designee shall examine evidence of its reliability, its validity for the intended purpose and for various student populations, and the extent to which it ***aligns with*** ~~corresponds to~~ the material that is being taught.

As appropriate, assessment results shall be disaggregated by student subgroup, classroom, grade level, and/or school site to allow for critical analysis of student needs.

~~The Superintendent or designee shall ensure that assessments are administered in accordance with law and the test publisher's directions and that test administration procedures are fair and equitable for all students.~~

~~*(cf. 0410 - Nondiscrimination in District Programs and Activities)*~~
~~*(cf. 6162.54 - Test Integrity/Test Preparation)*~~

The Superintendent or designee shall provide professional development to assist ***Administrators and T***eachers ~~and paraprofessionals~~ in interpreting and using assessment data to improve student performance and the instructional program.

(cf. 4131 - Staff Development)
(cf. 4131 - Staff Development)

When districtwide and school-level results of student assessments are published by the state, the Superintendent or designee may provide supplementary information to assist parents/guardians and the local community in understanding test results.

(cf. 0510 - School Accountability Report Card)

Interim and Formative Assessments

State interim and formative assessments may be used in combination with other sources of information to gain timely feedback about student progress in an effort to continually adjust instruction to improve learning. Results from interim and formative assessments shall not be used for any high-stakes purpose, including, but not limited to, teacher or other school staff evaluation, accountability, student grade promotion or retention, graduation, course or class placement, identification for gifted or talented education, reclassification of English learners, or identification as an individual with exceptional needs. (Education Code 60642.6, 60642.7)

(cf. 5123 - Promotion/Acceleration/Retention)
(cf. 6146.1 - High School Graduation Requirements)
(cf. 6152 - Class Assignment)
(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)
(cf. 6172 - Gifted and Talented Student Program)
(cf. 6174 - Education for English Learners)

The Superintendent or designee shall ensure that teachers who administer interim and formative assessments have access to all functions and information designed for teacher use related to such assessments and student performance on the assessments. (Education Code 60642.6)

Individual Record of Accomplishment

The Superintendent or designee shall ensure that each student, by the end of grade 12, has an individual record of accomplishment that includes the following: (Education Code 60607)

1. The results of the state achievement tests ***required and*** administered ***as part of the California Assessment of Student Performance and Progress, or any predecessor assessments,*** pursuant to Education Code 60640-60649 or any predecessor assessments

2. The results of any end-of-course examinations taken

3. The results of any vocational education certification examinations taken

(cf. 6178 - Career Technical Education)

No individual record of accomplishment shall be released to any person, other than the student's parent/guardian or a teacher, counselor, or administrator directly involved with the student, without the written consent of the student's parent/guardian, or the student if he/she is an adult or emancipated minor. The student or his/her parent/guardian may authorize the release of the record of accomplishment to a postsecondary educational institution for the purposes of credit, placement, or admission. (Education Code 60607)

(cf. 5125 - Student Records)

Legal Reference:

EDUCATION CODE
313 Assessment of English language development
10600-10610 California Education Information System
44660-44665 Evaluation and assessment of performance of certificated employees (Stull Act)
49558 Free and reduced-price meals; use of individual applications and records
51041 Evaluation of educational program
51450-51455 Golden State Seal Merit Diploma
52052 Accountability; numerically significant student subgroups
52060-52077 Local control and accountability plan
60600-60649 Assessment of academic achievement, especially:
60640-60649 California Assessment of Student Performance and Progress
60800 Physical fitness testing
60810-60812 Assessment of English language development
60900 California Longitudinal Pupil Achievement Data System
CODE OF REGULATIONS, TITLE 5
850-864 California Assessment of Student Performance and Progress
UNITED STATES CODE, TITLE 20
9622 National Assessment of Educational Progress

Management Resources:

~~CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS~~
~~Key Elements of Testing, 2004~~
~~U.S. DEPARTMENT OF EDUCATION PUBLICATIONS~~
~~Teachers' Use of Student Data Systems to Improve Instruction, 2007~~
WEB SITES
CSBA: http://www.csba.org
California Department of Education, Testing and Accountability: http://www.cde.ca.gov/ta
Educational Testing Service: http://www.ets.org
U.S. Department of Education: http://www.ed.gov

Policy: 6162.5 **CABRILLO UNIFIED SCHOOL DISTRICT**
Adopted: December 11, 2008 **Half Moon Bay, California**
Revised: May 12, 2011
Revised: June 26, 2014
Revised: August 9, 2018

Cabrillo USD

Board Policy

Title I Programs

BP 6171
Instruction

TITLE I PROGRAMS

The Governing Board desires to provide a high-quality education that enables all students to meet challenging state academic standards. In schools with a large number or percentage of economically disadvantaged families, the district shall use Title I funds to provide services that strengthen the academic program and provide support to students at risk of failing to achieve academic standards.

(cf. 6011 - Academic Standards)
(cf. 6162.5 - Student Assessment)
(cf. 6162.51 - State Academic Achievement Tests)

Title I funds shall be used to supplement, not supplant, funds available from state and local sources for the education of students participating in Title I programs. (20 USC 6314, 6321)

Descriptions of how the district will address the required components of the Title I local educational agency plan, as specified in 20 USC 6312, shall be included within the district's control and accountability plan (LCAP), the LCAP Federal Addendum, or another document. School-level strategies shall be aligned with the district's plan and be tailored to the specific needs of the students at the school.

(cf. 0420 - School Plans/Site Councils)
(cf. 0400 - Comprehensive Plans)
(cf. 0460 - Local Control and Accountability Plan)

In addition, the district and each school receiving Title I funds shall develop a written parent/guardian and family engagement policy in accordance with 20 USC 6318.

(cf. 6020 - Parent Involvement)

Comparability of Services

In schools receiving Title I funds, state and local funds shall be used to provide services that, taken as a whole, are at least comparable to services in schools that are not receiving Title I funds or, if all district schools are receiving Title I funds, that are substantially comparable in each school. Comparability may be determined on a school-by-school basis or by grade span. (20 USC 6321)

To demonstrate comparability of services among district schools, the district shall:

1. Adopt and implement a districtwide salary schedule

2. Ensure equivalence in teachers, administrators, and other staff, as measured by either or both of the following:

a. The ratio of students to instructional staff at each Title I school within a grade span, which shall not exceed 110 percent of the average ratio for all non-Title I district schools within that grade span

b. Salary expenditures for instructional staff at each Title I school, which shall be no less than 90 percent of the average salary expenditure across non-Title I district schools.

3. Ensure equivalence in the provision of curriculum materials and instructional supplies, by determining whether the per-student expenditure of state and local funds for curriculum materials and instructional supplies in Title I schools is between 90 and 110 percent of the districtwide average

4. Determine whether the amount of state and local funds allocated per student for each grade span is between 90 and 110 percent of the per student average for each grade span in non-Title I schools

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

In determining comparability, the district shall not include staff salary differentials for years of employment. The district also may exclude unpredictable changes in student enrollment or personnel assignments that occur after the beginning of the school year, state and local funds expended for language instruction educational programs, state and local funds expended for the excess costs of providing services to students with disabilities, and supplemental state or local funds expended in any school attendance area or school for programs that specifically meet the intent and purposes of Title I. (20 USC 6321)

The Superintendent or designee shall annually assess comparability in accordance with the above criteria and maintain records documenting the district's compliance. If any instances of noncomparability are identified, the Superintendent or designee shall promptly implement adjustments as needed to ensure comparability.

Participation of Private School Students

The district shall provide or contract to provide special educational services, instructional services (including evaluations to determine the progress being made in meeting students' academic needs), counseling, mentoring, one-on-one tutoring, or other Title I benefits to eligible private school students residing in a participating school attendance area.

Such services and benefits shall be provided on an equitable basis in comparison to services and other benefits for public school students. (20 USC 6320, 7881)

Program Evaluation

The Board shall regularly monitor the progress of economically disadvantaged and low-achieving students in Title I schools. During the annual evaluation of the district's

progress toward achieving each goal identified in the LCAP or other planning document addressing 20 USC 6312, the Board shall review disaggregated data on academic achievement, school attendance, and other outcomes for such students and shall ensure that strategies are revised as necessary to support continuous improvement.

(cf. 0500 - Accountability)
(cf. 6190 - Evaluation of the Instructional Program)

Legal Reference:

EDUCATION CODE
11503 Parent involvement programs in Title I schools
52060-52077 Local control and accountability plan
54420-54425 State Compensatory Education
64001 Single plan for student achievement, consolidated application programs
UNITED STATES CODE, TITLE 20
6301 Program purpose
6311-6322 Improving basic programs for disadvantaged students, including:
6312 Local educational agency plan
6313 Eligibility of schools and school attendance areas; funding allocation
6314 Title I schoolwide programs
6315 Targeted assistance schools
6318 Parent and family engagement
6320 Participation of private school students
6321 Comparability of services
6333-6335 Grants to local educational agencies
6391-6399 Education for migrant students
7881 Participation of private school students
CODE OF FEDERAL REGULATIONS, TITLE 34
200.1-200.73 Improving basic programs for disadvantaged students

Management Resources:

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
Frequently Asked Questions About Title I Schoolwide Programs
Local Control and Accountability Plan Federal Addendum Template
Meeting Title I, Part A Comparability Requirements, October 2017
U.S. DEPARTMENT OF EDUCATION PUBLICATIONS
Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act, Non-Regulatory Guidance, November 21, 2016
Title I Fiscal Issues, Non-Regulatory Guidance, February 2008
Designing Schoolwide Programs, Non-Regulatory Guidance, March 22, 2006
Title I Services to Eligible Private School Students, October 17, 2003
WEB SITES
CSBA: http://www.csba.org
California Department of Education: https://www.cde.ca.gov/sp/sw
U.S. Department of Education: http://www.ed.gov

~~In order to improve the academic achievement of students from economically disadvantaged families, the district shall use federal Title I funds to provide supplementary services that reinforce the core curriculum and assist students in attaining proficiency on state academic standards and assessments.~~

~~(cf. 5149 - At-Risk Students)~~

(cf. 6011 - Academic Standards)
(cf. 6162.5 - Student Assessment)
(cf. 6162.51 - Standardized Testing and Reporting Program)
(cf. 6162.52 - High School Exit Examination)

The Superintendent or designee shall provide technical assistance and support to any school participating in the Title I program, including consultation in the development and implementation of school plans and activities. (20 USC 6312)

(cf. 0420 - School Plans/Site Councils)

The district and each school receiving Title I funds shall develop a written parent involvement policy in accordance with 20 USC 6318.

(cf. 6020 - Parent Involvement)

Local Educational Agency Plan

The Superintendent or designee shall consult with teachers, principals, administrators, other appropriate school personnel, and parents/guardians of participating students in the development, periodic review, and, as necessary, the revision of a local educational agency (LEA) plan. The plan and any revisions shall be submitted to the Governing Board for approval. (20 USC 6312)

The plan shall address the components specified in 20 USC 6312, which describe the assessments, strategies, and services the district will use to help low-achieving students meet challenging academic standards.

The initial plan shall be submitted to the California Department of Education (CDE) and approved by the State Board of Education. Subsequent revisions of the plan shall be kept on file in the district.

Comparability of Services

State and local funds used in schools receiving Title I funds shall provide services that, taken as a whole, are at least comparable to services in schools that are not receiving Title I funds or, if all district schools are receiving Title I funds, that are substantially comparable in each school. Comparability may be determined on a school-by-school basis or by grade span. (20 USC 6321)

To demonstrate comparability of services among district schools:

1. The Board shall adopt and implement a districtwide salary schedule.

2. The ratio of students to teachers, administrators, and other staff at each Title I school shall not exceed 110 percent of the average ratio across non-Title I schools.

3. Salary expenditures at each Title I school shall be no less than 90 percent of the average salary expenditure across non-Title I schools.

4. All district schools shall be provided with the same level of base funding per student for curriculum and instructional materials.

5. The Superintendent or designee shall maintain records of the quantity and quality of instructional materials and equipment at each school.

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

At the beginning of each school year, the Superintendent or designee shall measure comparability in accordance with the above criteria and maintain records documenting the district's compliance. If any instances of noncomparability are identified, the Superintendent or designee shall promptly implement adjustments as needed to ensure comparability.

Program Evaluation

The Board shall use state assessment results and other available measures or indicators to annually determine whether each participating school is making adequate yearly progress toward ensuring that all students meet the state's proficient level of achievement on state assessments. (20 USC 6316)

(cf. 0520.2 - Title I Program Improvement Schools)
(cf. 0520.3 - Title I Program Improvement Districts)
(cf. 6190 - Evaluation of the Instructional Program)

Legal Reference:
EDUCATION CODE
11503 Parent involvement programs in Title I schools
52055.57 Districts identified or at risk of identification for program improvement
54020-54028 Economic Impact Aid
54420-54425 State Compensatory Education
64001 Single plan for student achievement, consolidated application programs
UNITED STATES CODE, TITLE 20
6301 Program purpose
6311-6322 Improving basic programs for disadvantaged students, including:
6312 Local educational agency plan
6313 Eligibility of schools and school attendance areas; funding allocation
6314 Title I schoolwide programs
6315 Targeted assistance schools
6316 School improvement
6318 Parent involvement
6320 Participation of private school students
6321 Comparability of services
7881 Participation of private school students
CODE OF FEDERAL REGULATIONS, TITLE 34
200.1-200.79 Improving basic programs for disadvantaged students

Management Resources:
CSBA PUBLICATIONS
Parent Involvement: Development of Effective and Legally Compliant Policies, Governance and Policy Services Policy Briefs, August 2006
CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS
LEA Plan, rev. May 17, 2006
Provisions for Private School Students, Teachers, and Other Education Personnel in the No Child

~~Left Behind Act of 2001, rev. November 1, 2005~~
~~U.S. DEPARTMENT OF EDUCATION - GUIDANCE~~
~~Title I Fiscal Issues, May 26, 2006~~
~~Designing Schoolwide Programs, March 22, 2006~~
~~Supplemental Educational Services, June 13, 2005~~
~~The Impact of the New Title I Requirements on Charter Schools, July 2004~~
~~Parental Involvement: Title I, Part A, April 23, 2004~~
~~Serving Preschool Children Under Title I, March 4, 2004~~
~~Title I Services to Eligible Private School Students, October 17, 2003~~
~~Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools, August 2003~~
~~WEB SITES~~
~~CSBA: http://www.csba.org~~
~~California Department of Education: http://www.cde.ca.gov/iasa/titleone~~
~~No Child Left Behind: http://www.ed.gov/nclb~~
~~U.S. Department of Education: http://www.ed.gov~~

Policy: 6171 **CABRILLO UNIFIED SCHOOL DISTRICT**
Adopted: December 11, 2008 **Half Moon Bay, California**
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