FREMONT UNION HIGH SCHOOL DISTRICT
REQUEST FOR QUALIFICATIONS AND PROPOSALS
LEASE-LEASEBACK CONSTRUCTION SERVICES
RFQ/P # 26-27-02

Fremont Union High School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction of the **Fremont High School New Art, Design, and Engineering Building Project** ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, can be found on the District website at: www.fuhsd.org/departments/business-services under the RFP/RFQ/BIDS section. Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet"). Respondents must mail or deliver five (5) bound copies and one (1) electronic copy in PDF on a thumbdrive or flashdrive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

FREMONT UNION HIGH SCHOOL DISTRICT
589 W. Fremont Avenue
Sunnyvale, CA 94087
ATTN: Faith Carrillo
RE: RFQ/P # 26-27-02

ALL RESPONSES ARE DUE BY 2:00 P.M. ON MONDAY, OCTOBER 12, 2026. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened.

An informational meeting will be conducted on **TUESDAY, SEPTEMBER 22, 2026,** at **2:00 P.M.** The meeting will be held via Zoom Meeting. The link to the meeting will be posted on District website at: www.fuhsd.org/departments/business-services under the RFP/RFQ/BIDS section.

Questions regarding this RFQ/P may be directed to Faith Carrillo, faith_carrillo@fuhsd.org and must be submitted in writing on or by **5:00 P.M. ON MONDAY, SEPTEMBER 28, 2026**.

All Respondents must have already been prequalified by the District in accordance with Public Contract Code, § 20111.6. First tier electrical, mechanical, and plumbing subcontractors are required by Public Contract Code, § 20111.6 and must be prequalified prior to subcontractor bids being submitted. Contractors of all tiers must be currently registered and qualified to perform public work pursuant to Labor Code, § 1725.5. The District's prequalification materials can be accessed at the following web address: www.qualitybidders.com.

The District reserves the right to change the dates on the schedule without prior notice.

RFQ/P SCHEDULE SUMMARY

DATE	ACTION ITEM
9/11/2026	Release and advertisement of RFQ/P.
9/11/2026	RFQ/P packages available for distribution.
9/22/2026 at 2:00pm	***Informational Meeting via Zoom.***
9/28/2026	Last day to receive written questions from Respondents.
10/2/2026	Last day for District to issue addenda to answer questions/clarifications.
10/12/2026 at 2:00 pm	**Deadline for submissions in response to RFQ/P.**
10/19/2026	Release of shortlist qualified Respondents and interview notifications.
Week of 11/2/2026	Interviews of qualified Respondents, if used.
11/17/2026 Board Meeting	Tentative Award and Notice to selected developer.

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FREMONT UNION HIGH SCHOOL DISTRICT
REQUEST FOR QUALIFICATIONS AND PROPOSALS
LEASE-LEASEBACK CONSTRUCTION SERVICES

I. INTRODUCTION

Fremont Union High School District ("District") is a public school district serving nearly 11,000 students at five comprehensive high schools—Cupertino, Fremont, Homestead, Lynbrook, and Monta Vista.

This Request for Qualifications and Proposals ("RFQ/P") defines the services sought from Respondents and generally outlines the Project requirements. Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet").

II. PROJECT DESCRIPTION AND SCOPE OF SERVICES

A. General

The purpose of this RFQ/P is to solicit proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction of the **Fremont High School New Art, Design, and Engineering Building Project** ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq. Selected developer shall have experience with the construction of public school facilities and in working with the Office of Public School Construction ("OPSC"), the Division of the State Architect ("DSA"), and Title 24 of the California Code of Regulations.

To submit a proposal, Respondents must be properly licensed by the California Contractors State License Board and registered with the Department of Industrial Relations ("DIR") as required by law. Only Respondents who have been prequalified by the District in accordance with Public Contract Code section 20111.6 are eligible to respond to this RFQ/P. The District's prequalification materials can be accessed at the following web address: www.qualitybidders.com. The selected developer will be required to comply with the Labor Code prevailing wage requirements and the District's bonding and insurance requirements. The selected developer and its subcontractors must agree to be bound by the District's Project Labor Agreement. The selected developer shall be required to work cooperatively with District staff, the Governing Board, all other technical consultants, the architect, the project inspector, and any program and/or construction manager, if any, retained by the District for the Project, citizens' oversight committee, other District committees, and the community to facilitate timely and professional completion of the Project.

The Project is further defined in the attached **APPENDIX A**, along with the District's construction budget for the Project. Respondent's Proposal shall include Respondent's proposed fees to perform the Project, including the proposed fees to perform preconstruction services or any other work related to the Project, as requested by the District. Each Respondent must submit a budget for each scope of work as well as an overall cost if the Respondent is given all of the work.

The District intends to select one Respondent that best meets the District's needs to perform the project. The criteria on which the District makes its determination will be based on the District's adopted best value methodology and criteria provided in this RFQ/P.

The period of performance shall be commensurate with the duration of the Project. The District may, at its sole discretion, extend the term of any contract associated with this solicitation for five separate twelve-month option periods by providing written notice to the selected developer not less than ninety (90) days before the contract expiration date. The total duration of any associated contract shall not exceed five (5) years.

B. Scope of Work

Although the final scope of work will be negotiated in the executed Agreement (defined below at subparagraph G) for the Project, the selected developer shall be responsible for performing the following scope of work, at a minimum:

Preconstruction Services:

1. Review design and support documentation for content, constructability, completeness, scheduling, clarity, consistency, and coordination.

2. Undertake value-engineering analysis and prepare reports with recommendations to District and Architect of Record to maintain established program budget and specifications.

3. Provide detailed cost estimates.

4. Expedite design reviews, including modifications, if any, based on value analysis.

5. Provide a proposed Guaranteed Maximum Price ("GMP") for the construction of the project with identified subcontractor bids and self-performed work.

Construction Services:

1. Construction of the Project.

2. Coordination of record drawings and specifications.

3. Compilation of operations and maintenance manuals, warranties/guarantees, and certificates.

4. Obtaining occupancy permits and coordinating testing, documentation, and governmental inspections and approvals.

5. Preparation of accounting and closeout reports and occupancy plan reports.

6. Other responsibilities as necessary for the completion of the program.

C. Lease-Leaseback Structure

The Project will be funded from various sources, and any agreement reached will conform to the statutory framework for the lease-leaseback delivery method pursuant to Education Code section 17406, et seq. Financing for a portion of the construction of the Project will be included in the Agreement (defined below at subparagraph G). During construction, the

District shall pay tenant improvement payments. Once the Project is complete, the developer shall lease the completed facilities back to the District for a pre-determined monthly lease payment amount. However, the District intends that the lease will include an early termination payment option for the District.

D. District Project Management Description

District's Governing Board will be responsible for making final decisions, but the Superintendent will be responsible for day-to-day decisions and may designate a project manager who will be the primary point of contact between the selected developer and the District.

E. Prequalification of Designated Subcontractors

If used, contractors 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 (collectively, "MEP subcontractors") shall be prequalified by the District to perform construction work as a first tier subcontractor on the Project pursuant to Public Contract Code section 20111.6.

F. Registration of Respondent and All Tiers of Subcontractors

The selected developer(s) shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of registration with the Department of Industrial Relations required of the developer or subcontractor has been provided to and accepted by the District.

G. Form of Agreement

Selected developer must be able to execute the District's standard form of Site Lease and Facilities Lease, ("Agreement") is attached to this RFQ/P as **APPENDIX B**. After the plans and specifications have been approved by DSA, the Facilities Lease will be amended to include the agreed upon Guaranteed Maximum Price.

H. Indemnity

Respondents responding to this RFQ/P must acknowledge that they have reviewed the District's indemnity provision set forth in the Facilities Lease (in **APPENDIX B**) and must agree to the indemnity provision and confirm in writing that, if given the opportunity to contract with the District, the Respondent has no substantive objections to the use of the District's standard indemnity provision.

I. Insurance

The District requires at least the following insurance coverage:

- Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments
    - Each Occurrence
    - General Aggregate

- Automobile Liability Insurance
    - Combined Single Limit
- Workers Compensation and Employer's Liability
- Pollution Liability
- Builder's Risk
- Sexual Abuse and Molestation

Selected developer shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. Insurance policy(ies) shall not be amended or modified and coverage amounts shall not be reduced without thirty (30) days' written notice to District prior to modification and/or cancellation. For Commercial General Liability and Automobile Liability, District shall be named as an additional insured on all policies. Selected developer's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. Selected developer shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of insurance required of the developer or subcontractor has been provided to and accepted by the District.

III. FULL OPPORTUNITY

No respondent will be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status in any consideration leading to the award of the contract. The District also affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to respond to this RFQ/P.

IV. LIMITATIONS

This RFQ/P is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ/P. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFQ/P if it is found to be in the best interest of the District. All decisions concerning selection of the developer will be made in the best interests of the District. The awarding of the contract pursuant to this RFQ/P, if at all, is at the sole discretion of the District.

The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P.

RFQ/P Packets and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ/P Packets shall be held confidential by the District and shall not be

subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ/P Packet.

V. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ/P, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ/P, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a RFQ/P Packet.

VI. INFORMATIONAL MEETING

It is highly recommended that each Respondent attend the informational meeting, to be conducted on **TUESDAY, SEPTEMBER 22, 2026,** at **2:00 P.M.** The meeting will be held via Zoom Meeting and the link to the meeting will be posted on District website at: www.fuhsd.org/departments/business-services under the RFP/RFQ/BIDS section.

At this meeting, District representatives will distribute information and materials to further describe the Project, the scope of work, and review the proposed Project site. Respondents shall consider and address the materials and information distributed at the meeting in their RFQ/P Packets.

VII. SUBMITTAL FORMAT

A. Format

Material must be in 8½ x 11-inch format with font no less than 11-point font. The RFQ/P Packets shall include divider tabs labeled with boldface headers below (e.g. the first tab would be entitled "Executive Summary," the second tab would be entitled "Table of Contents," etc.) Five (5) bound copies, and one (1) electronic copy of the RFQ/P Packet shall be submitted. Each submittal shall not contain more than twenty-two (22) pages, excluding front and back covers, tabs, certificates of insurance, required Certifications/Declarations, detailed schedule charts, and comments to the Form of Agreement (Tab 11). Submittals containing more than twenty-two (22) single-sided pages or eleven (11) double-sided pages will not be considered.

The unbound copy, marked "Copy for Reproduction," shall be formatted as follows:

- No divider sheets or tab
- Text printed on one side only (i.e., no back-to-back pages)
- Pages with proprietary information removed
- A cover sheet listing the firm's name, the total number of pages, and identification of those pages that were removed due to proprietary information

B. General Overview

Each RFQ/P Packet shall include a description of the type, technical experience, backgrounds, qualifications and expertise of the Respondent. The description shall show that the firm

possesses the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District as its developer for the Project. Submittals shall describe in detail the Respondent's methods and plan for carrying out the Project. Included in this information must be a detailed description of construction scheduling, staging, and logistics based on timelines and information provided by the District in this RFQ/P and the informational meeting. Describe the Respondent's approach to the Project, including any creative methodology and/or technology that the Respondent uses or unique resources that the Respondent can offer to the District and Project.

C. Contents

Respondents shall comply with the following requirements for its RFQ/P Packet:

1. **TAB 1 – Executive Summary** (maximum 1 page)

This should be an overview of the entire RFQ/P Packet with a description of the general approach and/or methodology the Respondent will use to meet the goals and fulfill the general functions as set forth in this RFQ/P.

2. **TAB 2 – Table of Contents**

This should be a complete and clear listing of the headings and pages to allow easy reference to key information.

3. **TAB 3 – Cover Letter Identifying Respondent** (maximum 1 page)

This should be a letter of introduction signed by an authorized officer of the Respondent. If the Respondent is a joint venture, duplicate the signature block and have a principal or officer sign on behalf of each party to the joint venture. The letter shall also include:

a) Respondent's name.

b) Address, include any branch office address and point of contact.

c) Telephone number.

d) Facsimile number.

e) E-Mail address.

f) Identify team.

g) Clearly identify the individual(s) who are authorized to speak for the Respondent during the evaluation process.

h) And, the following statement:

"[RESPONDENT'S NAME] received a copy of the District's Site Lease and Facilities Lease ("Agreement") attached as **APPENDIX B** to the RFQ/P. [RESPONDENT'S NAME] has reviewed the indemnity provisions in **APPENDIX B** and insurance requirements contained in the Agreement. If given the opportunity to contract

with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

i) Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

4. **TAB 4 - Respondent Information**

a) A brief history of the Respondent. Please include any former names of the Respondent and the number of years the Respondent has participated in construction as a general contractor under each name.

b) Organizational chart of the Respondent. This shall include the names of all key personnel, joint venture partners, and sub-consultants with their titles and specific task assignments for the Project. The District's evaluation will consider the entire team. Therefore, no changes in the Respondent's composition will be allowed without prior written approval by the District.

c) A description of the Respondent and its organizational structure. Resumes of personnel to be involved with the Project should be included, including their school construction experience. Upon engagement, any change in personnel must be approved by the District. Respondent shall be responsible for any additional costs incurred by a change in personnel.

d) Provide description of Respondent's technical competence, including a description of in-house resources (e.g. computer capabilities, software applications, modeling programs, etc.), and Respondent's ability to draw upon multi-disciplinary staff to address the services required under the RFQ/P.

e) Identify up to three (3) persons who will be primarily responsible for working with the District and their respective roles and responsibilities, including: Project Manager, Superintendent, Foreman. If Respondent is selected for an interview, the identified individuals must attend the interview and any required in-person presentations.

f) Provide the volume of construction in dollars for each of the past three (3) years.

g) Provide a statement regarding the Respondent's availability and resources.

h) Provide a statement on financial resources, bonding capacity and insurance coverage.

i) Provide a claims statement *for all resolved or ongoing claims*: Submit a statement indicating any and all suits or claims in which the Respondent or its personnel instigated a claim and/or litigation regarding construction projects within the past five (5) years, and indicating any and all claims in which claims and/or litigation have been pursued against the Respondent or its personnel. For each listed claim and/or litigation: state the issues in the claim and/or litigation, the status of the claim/litigation, the names of the parties involved, and the outcome, if any.

Respondent's claims statement **must** include resolved *and* ongoing claims. Respondent's claims statement **must** include claims history for Respondent *and* its personnel, as well as Associated Firms.

"Associated Firms" are businesses, corporations, companies, partnerships, or other entities associated with Respondent and/or its personnel (e.g., firm name changes, association as prior owner, general partner, limited partner, or other officer).

j) Contractor license number and whether license has been revoked or suspended in the last five (5) years. Respondent must hold a General Building Contractor License (B License), which is current, valid and in good standing with the Contractor's State License Board. Provide the following for each license:

i. Exact name of license holder on file
ii. License Classification
iii. License Number
iv. Date Issued
v. Expiration Date
vi. Whether license has been suspended or revoked in the past five (5) years. If so, explain.
vii. Provide the same information for all subconsultants and subcontractors.

k) Provide signatory status.

l) Location of nearest local office and main office, if different.

m) Certificate(s) of Insurance identifying the firm's current insurance coverages.

n) Provide Non-Collusion Declaration. (**APPENDIX C-1**.)

o) Provide Iran Contracting Act Certification. (**APPENDIX C-2**.)

p) Provide Off-Road Diesel-Fueled Fleet Certification. (**APPENDIX C-3**.)

5. **TAB 5 – Methods and Strategic Plan**

Detailed description of Respondent's methods and plan for carrying out the Project, including:

a) The technical and managerial approach to the Respondent's partnership with the District. Take into account the District's goals for the Project and the general functions required. Respondent may identify additional necessary tasks and discuss these in its proposed method to accomplish the work.

b) How Respondent plans to incorporate local subcontracting teams into the Project.

c) How Respondent plans to incorporate construction means and methods into the Project.

d) Proposed cost for completing preconstruction services for the Project for which the Proposal is being submitted.

e) ***Detailed*** discussion of costs related to fees, general conditions, insurance, supervision, and management of the construction portion of the scope of work.

Emphasis will be given to the methods and strategic plan as they relate to preconstruction services and how the preconstruction services will transition into the construction services.

6. **TAB 6 – Prior Relevant Experience**

Description of the Respondent's experience with respect to the areas of public schools or similar construction over the past five (5) years. Specifically, please provide a list of all projects the Respondent has been involved with for the past five (5) years where the total project contracts exceeded two million dollars ($2,000,000) per project. Within that list:

a) Identify all projects involving new construction of Art buildings or related facilities.

b) Identify all projects involving modernization work.

c) Identify the method (e.g. lease-leaseback, bid-build, etc.) by which each project was constructed. For lease-leaseback projects, include the total cost of each project and a breakdown of the total cost by pre-construction services and construction services.

d) Include a discussion of Respondent's experience with working with the DSA on public school projects.

e) Identify and include discussion of Respondent's experience with projects performed in an occupied building and/or immediately adjacent to an occupied building and/or campus.

For the projects listed above, be sure to also include the following information:

a) Project's name and description;

b) Firm's role;

c) Award and completion dates;

d) Project's total value;

e) Amount of fees received;

f) Staffing, including Respondent's team members, subcontractors and consultants;

g) Relationship with owner/client;

h) References: Provide a contact name, telephone number and email address for the owners and indicate which key personnel of Respondent worked on each project; and

i) Discussion of claims, demands, and/or litigation arising from the project and involving the Respondent, and resolution of the same.

j) Include examples of other similar project assignments on the part of the Respondent.

List projects Respondent has successfully completed that had some or all of the following obstacles, including the creative solutions from the Respondent on how these obstacles were overcome:

a) A very aggressive schedule.

b) Significant budgetary restrictions.

c) Be prepared to expand upon what you did to accommodate:

i. The complexity of the project;
ii. The needs of the clients;
iii. Minimizing inconvenience; and
iv. Maximizing safety.

7. **TAB 7 – Contracting History**

If any of the following have occurred, please describe in detail the circumstances of each occurrence:

a) Failure to enter into a contract or professional services agreement once selected.

b) Withdrawal of a proposal or bid as a result of an error.

c) Termination or failure to complete a contract.

d) Debarment by any municipal, county, state, federal, or local agency.

e) Involvement in litigation, arbitration, or mediation.

f) Conviction of the Respondent or its principals for violating any state or federal antitrust laws by bid or proposal rigging, collusion,

or restrictive competition between bidders or proposers, or conviction of any other federal or state law related to bidding or performance of services.

g) Knowing concealment of any deficiency in the performance of a prior contract.

h) Falsification of information or submission of deceptive or fraudulent statement in connection with a contract.

i) Willful disregard for applicable rules, laws, or regulations.

j) Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. Information regarding any of the above may be considered in determining the suitability of Respondent to perform the needed services. Accordingly, Respondent may describe mitigating factors as part of description of any of the above.

8. **TAB 8 – Pricing and Contingency**

Pricing proposals will be evaluated based on all information required in **Appendix D** including, without limitation, the: (1) preconstruction services cost or method of calculation; (2) Respondent's fee, which includes profit and overhead; (3) general conditions cost; (4) additional mark-up on subcontractor prices; (5) construction contingency to be applied to errors and omissions; and (6) allowances, if any.

Respondents must use the proposal format found in **Appendix D** for the proposal and submit a pricing proposal for the Project.

After the Agreement is awarded, and DSA approves the plans and specifications, the selected developer will be required to provide a Guaranteed Maximum Price ("GMP") for the Project. As part of the District review of the GMP, the District will expect to have access to all subcontractor bids, contingency breakdown and tracking documents, general conditions breakdown and tracking documents, and Respondent's fees. The GMP shall include all of Respondent's cost for labor, materials, equipment, overhead and profit, general conditions, contractor contingency, and allowances, if any, but shall specifically exclude the amount of the District contingency. In the event the selected developer realizes a savings on any aspect of the Project, such savings shall be added to the District contingency and expended consistent with the District contingency. In addition, any portion of the contractor contingency and/or allowance remaining after completion of the Project shall be added to the District contingency. The Facilities Lease will be amended to include the agreed upon GMP, if the District proceeds with the construction phase of the Project.

9. **TAB 9 – Insurance**

Each Respondent must demonstrate that it can maintain adequate insurance as required herein. Therefore, each RFQ/P Packet must include a letter from the Respondent's insurance company indicating its ability to provide insurance coverage on behalf of Respondent in accordance with the insurance requirements in **APPENDIX B**.

10. **TAB 10 – Assurances**

The Respondent must acknowledge each of the following items and confirm that it will be willing and able to perform these items:

- **Preconstruction Services:** Respondent shall provide services that relate to the organization and development of the Project prior to the start of construction including the following:

  a) **Site Evaluation:** 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.

  b) **Plan Review:** 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.

  c) **Design Team Meetings:** Attend meetings at the Project site with the architect of record and the design team as needed.

  d) **Value Engineering:** Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.

  e) **Detailed Construction CPM Schedule:** Produce detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.

  f) **Preliminary and Detailed Estimates:** Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.

  g) **Construction Planning:** Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.

  h) **Other services:** 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.

- **Construction Services:**

  a) **Project Accounting and Management Systems:** In coordination with District staff, develop the Project accounting and budget management systems. A process of up-to-date costs management will be necessary. During construction, monthly reporting will be required.

  b) **General Conditions:** List what is included in the Respondent's general conditions (including full-time and part-time personnel) and a monthly value of the general conditions. Indicate what would be included as a cost of work

versus a line item in the general conditions. See **APPENDIX C-4** for an example.

c) **Management of Project:** Administer and coordinate on a daily basis the work of all trade contractors the successful Respondent hires to work on the Project. Enforce strict performance, scheduling, and notice requirements. Document the progress and costs of the Project. Report proactively on potential schedule impacts. Recommend potential solutions to schedule problems.

d) **Trade Contractors:** Pursuant to Public Contract Code section 20111.6, each prospective MEP Contractor 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 shall be prequalified by the District to perform construction work as a first-tier subcontractor on the Project.

11. **TAB 11 – Comments to Form of Agreement**

Respondents must thoroughly review the Agreement attached to this RFQ/P as **Appendix B** and confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District's standard agreement. Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, deleting, or adding. Respondents must set forth a clear explanation of what modification would be sought and specific alternate language. Comments on the form of Agreement will be excluded from the page count. ***If selected, Respondent will be precluded from negotiating changes that have not been identified in its RFQ/P Packet.*** The District will review, but is not obligated to accept, any proposed changes.

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VIII. SELECTION CRITERIA

A. Best Value Evaluation

The RFQ/P Packets will be evaluated based on the District's adopted criteria and rating system to determine the qualified Respondent(s) providing the best value to the District for all candidates that meet the pass / fail criteria listed below (i.e., receive a PASS).

CRITERIA ITEM	DESCRIPTION	MAXIMUM POINTS
Conflict of Interest	Is there a conflict of interest?	PASS / FAIL
Safety	Safety record	PASS / FAIL
Form of Agreement	Proposed changes to District Form of Agreement	PASS / FAIL
Technical Expertise	Technical Expertise, including but not limited to relevant experience with like-Projects, prior lease-leaseback experience, value-engineering experience, constructability experience, references	26 points
Interview (If used, score; if not used, all respondents receive 0 points.)	Interview Performance, including but not limited to proposed team attendance, performance, approach to work	22 points
Price	All aspects of Respondent's pricing proposal for the Project.	22 points
Staffing	Management and Staffing Approach	16 points
Schedule/Liquidated Damages	History of meeting Project Schedule and Delivery Date	7 points
Claims/Litigation	Acceptable history of claims and litigation	7 points
		TOTAL: MAXIMUM 100 POINTS

Based on these criteria and rating system, District staff assigns points to each proposer and calculates the percentage of points assigned for each criterion and for the total maximum points. The higher the percentage point, the higher the proposer is ranked, and the more it reflects the better combination of price and qualifications for the Project.

B. District Investigations

The District may perform investigations of proposing parties that extend beyond contacting the references identified in the proposals.

C. Selection of Finalists

RFQ/P Packets shall be evaluated and the Project awarded in the following manner:

1. All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in RFQ/P.

2. District shall evaluate the qualifications of the Respondents based solely upon the adopted criteria and evaluation methodology, and shall assign a best value score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the District.

3. The District's Governing Board shall award the Project to the responsive proposer whose proposal is determined, in writing by the Governing Board, to be the best value to the District.

4. If the selected developer refuses or fails to execute the tendered proposed contract, the Governing Board may award the contract to the proposer with the second highest best value score if it deems it to be for the best interest of the District. If the second selected developer refuses or fails to execute the tendered instrument, the Governing Board may award the instrument to the proposer with the third highest best value score if it deems it to be for the best interest of the District.

5. Notwithstanding any other law, upon issuance of a contract award, the District shall publicly announce its award, identifying the entity to which the award is made, along with a statement regarding the basis of the award. The statement regarding the District's contract award and the contract file shall provide sufficient information to satisfy an external audit.

D. Interviews

Some of the finalists who elect to pursue the work with the District may be invited to meet with a District selection committee. If a firm is requested to come for an interview, the key proposed Project staff will be expected to attend the interview. The interview will be an opportunity for the District selection committee to review the proposal, the firm's history, and other matters the committee deems relevant to firm evaluation. The interview will start with an opportunity for the firm to present its proposal and its Project team. The finalists may be required to submit in advance of the interview a more detailed fee proposal. If requested, this fee proposal shall include all charges and costs proposed to be charged to the District, including rates for extra work.

Any comments or objections to the form of Agreement attached hereto as **APPENDIX B** to this RFQ/P shall be provided in writing before the interview and may be the subject of inquiry at the interview. Any comments or objections to the form of Agreement not provided in writing before the interview will not be entertained by the District.

E. Final Determination and Award

It is expected that the selection committee will make recommendations to District staff regarding the candidates and awarding the contract(s).

The District reserves the right to contract with any entity responding to this RFQ/P for all or any portion of the work described herein and/or in the agreement(s) offered to the entity, to reject any proposal as non-responsive, and/or not to contract with any firm for the services described herein. The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The

District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P.

The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract(s) for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFQ/P.

The RFQ/P packet, and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. This RFQ/P does not commit the District to negotiate an agreement with any proposing firm or individual.

IX. SUBMISSION GUIDELINES

Respondents to this RFQ/P should mail or deliver five (5) bound copies, and one (1) electronic copy on thumbdrive or flashdrive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

FREMONT UNION HIGH SCHOOL DISTRICT
589 W. Fremont Avenue
Sunnyvale, CA 94087
ATTN: Faith Carrillo
RE: RFQ/P # 26-27-02

ALL RESPONSES ARE DUE BY 2:00 P.M. ON MONDAY, OCTOBER 12, 2026. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened.

Questions regarding this RFQ/P may be directed to Faith Carrillo, faith_carrillo@fuhsd.org, and must be submitted on or by **5:00 P.M. ON MONDAY, SEPTEMBER 28, 2026**.

Each submittal must conform and be responsive to the requirements set forth in this RFQ/P. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive, responsible, and qualified.

The District hereby notifies all Respondents that it will affirmatively ensure that, in any contract(s) entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit its response to this RFQ/P and no respondent will be discriminated against on the grounds of race, color, sex, age, ancestry, religion, marital status, national origin, medical condition or physical disability on consideration for the award.

WE THANK YOU FOR YOUR INTEREST IN THE DISTRICT'S PROJECT.

APPENDIX A
Project Description

Project Name: Fremont High School New Art, Design, and Engineering Building

The project scope of work includes limited modernization of Wing 150, construction of new Art, Design, and Engineering (ADE) building, demolition of existing Wings 150 and 160, and related sitework (+/-50,000 sq.ft.) including a shade structure. The new ADE building will be sited similarly to the existing Wing 160 building. The demolished Wing 150 will be replaced by sitework. Construction will include minor swing space upgrades, and a subsequent two phases of construction. Swing space upgrades consist of modernization of Wing 150 (+/-2,800 sq.ft.). This converts a vacant auto shop into swing space for use during ADE Building construction. Scope includes new casework and sinks, electrical and AV upgrade, fencing, and salvage and reinstallation of existing equipment including two kilns to be located outdoors.

Phase 1 *construction consists of Wing 160 demolition, ADE Building construction (+/-19,300 sq.ft.), associated utilities, and adjacent sitework. The building consists of art, design, and engineering classrooms and supporting offices, storage, restrooms, and a covered walkway. Classrooms include AV systems, casework, sinks with downstream intercepts and traps, supplementary exhaust, new equipment for art, print shop, and engineering uses, and reinstallation of salvaged equipment. The building includes a kiln room consisting of new and salvaged kilns.*

Phase 2 *construction consists of Wing 150 demolition and sitework. Sitework includes decorative fencing, chain-link fencing, planting, concrete, asphalt, site furnishings, and illuminated monument signage. A new shade structure (+/-3,200 sq.ft.) will cover a new chain-link bike enclosure. A new covered walkway will abut the new ADE Building. The covered walkway cannot be constructed during the prior phase, as it would obstruct an existing fire lane. After Wing 150 is demolished, the new covered walkway can be constructed.*

Completion Date: Summer 2029

Project Estimate: $22,000,000

Architect: Aedis Architects


AREA OF WORK

APPENDIX B
Form of Site Lease and Facilities Lease

See Attached.

SITE LEASE

For all or a portion of the following Site:

Fremont High School New Art, Design, and Engineering Building Project
575 W. Fremont Ave.
Sunnyvale, CA 94087
APN: _____

By and between

Fremont Union High School District
589 W. Fremont Avenue
Sunnyvale, CA 94087

And

[Developer]
[Address]

Dated as of _____, 20__

SITE LEASE

This site lease ("Site Lease") dated as of _____, 20__ ("Effective Date"), is made and entered into by and between the Fremont Union High School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and _____ ("Developer"), a [California corporation] duly organized and existing under the laws of the State of [California], as lessee (together, the "Parties").

RECITALS

WHEREAS, the District currently owns a parcel of land located at 575 W. Fremont Ave., Sunnyvale, CA 94087, known as Fremont High School, as more particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by this reference ("Site"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the Site, including construction of improvements to be known as the Fremont High School New Art, Design, and Engineering Building Project ("Project"); and

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

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

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

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

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

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

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

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

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

1. Definitions

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

2. Exhibits

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

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

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

3. Lease of the Site

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

4. Leaseback of the Project and Site

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

5. Term

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

6. Payment

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

7. Termination

7.1. Termination Upon Purchase of Project

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

7.2. Termination Due to Default by Developer

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

7.3. Termination Due to Default by District

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

7.3.1. Take possession of the Site.

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

7.3.3. Re-let the Site; and

7.3.4. Stop all Work associated with the Site Lease.

8. Title to Site

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

9. Improvements

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

10. No Merger

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

11. Right of Entry

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

12. Quiet Enjoyment

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

13. Waste

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

14. Further Assurances and Corrective Instruments

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

15. Representations of the District

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

15.1. Due Organization and Existence

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

15.2. Authorization

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

15.3. No Violations

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

or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

15.4. CEQA Compliance

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

15.5. Condemnation Proceedings

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

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

15.6. Use and Zoning

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

15.7. Taxes

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

16. Representations of the Developer

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

16.1. Due Organization and Existence

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

16.2. Authorization

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

16.3. No Violations

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

16.4. No Bankruptcy

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

16.5. No Litigation

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

17. Insurance and Indemnity

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

18. Assignment and Subleasing

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

19. Restrictions on District

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

20. Liens and Further Encumbrances

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

21. Notices

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

If to District:	**If to Developer:**
Fremont Union High School District 589 W. Fremont Avenue Sunnyvale, CA 94087 Attn: Christine Mallery	[Developer] [Address] Attn: [Name, Title]

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

22. Binding Effect

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

23. No Additional Waiver Implied by One Waiver

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

24. Severability

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

25. Amendments, Changes and Modifications

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

26. Obligations Absolute

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

27. Execution in Counterparts

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

28. Developer and District Representatives

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

29. Applicable Law

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

30. Attorney's Fees

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

31. Captions

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

32. Prior Agreements

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

33. Further Assurances

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

34. Recitals Incorporated

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

35. Time of the Essence

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

36. Force Majeure

A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil

disturbance, forces of nature, fire, flood, earthquake, or strikes or lockouts, and such non-performance will not be a default hereunder or a grounds for termination of this Site Lease.

37. Interpretation

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_	Dated: _____, 20__
Fremont Union High School District	[Developer]
By: _____	By: _____
Name: Christine Mallery	Name: _____
Title: Chief Business Official, Associate Superintendent	Title:_____

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

Fremont High School New Art, Design, and Engineering Building Project
575 W. Fremont Ave.
Sunnyvale, CA 94087

<TO BE INSERTED AT A LATER DATE>

EXHIBIT B

DESCRIPTION OF PROJECT

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

<TO BE INSERTED AT A LATER DATE>

FACILITIES LEASE

For all or a portion of the following Site:

Fremont High School New Art, Design, and Engineering Building Project
575 W. Fremont Ave.
Sunnyvale, CA 94087
APN: _____

By and between

Fremont Union High School District
589 W. Fremont Avenue
Sunnyvale, CA 94087

And

[Developer]
[Address]

Dated as of _____, 20__

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Exhibits A - H

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of _____, 20__ ("Effective Date"), is made and entered into by and between [Name of Developer] ("Developer"), a [California corporation] duly organized and existing under the laws of the State of [California], as sublessor, and Fremont Union High 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 completed project and site; and

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at 575 W. Fremont Ave., Sunnyvale, CA 94087, known as Fremont High School, particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by reference ("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 Site to Developer ("Site Lease"); and

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

WHEREAS, District has retained Aedis 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 Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the completed Project and site 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 on 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 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 Site as lessee and to develop the Project by constructing the Project on the Site and to lease the completed Project and 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 _____, a [California corporation], organized and existing under the laws of the State of [California], Contractor's license number _____ issued by the State of California, Contractors' State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code, and its successors and assigns.

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

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

1.4 "**District**" or "**Lessee**" means the Fremont Union High 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 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 Site: The description of the real property constituting the Site.

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

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 Developer, including Attachment 3, the Schedule of Lease Payments and Payoff Dates and Amounts.

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

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

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

2.7 Exhibit F - Construction Schedule

2.8 Exhibit G – Schedule of Values

2.9 Exhibit H – Project Stabilization Agreement

3. Lease of Project and Site

3.1 Developer hereby leases the completed Project to the District, and the District hereby leases said completed Project and 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 completed Project and 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 Site pursuant to the Site Lease throughout the Term thereof and the Term of this Facilities Lease.

3.3 As to the 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 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 **Exhibit D** 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 completed Project and Site by 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 Site, including the Project, 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 Site pursuant to the Site Lease.

6.3 During the Term of this Facilities Lease, 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 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 Site as provided herein.

8. Representations of the District

The District represents, covenants and warrants to 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 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 Developer

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

9.1 Due Organization and Existence

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 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 Site, and shall not mortgage or encumber the 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. Preconstruction Services

10.1 Scope of the Preconstruction Services

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

10.1.1 General Services

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

10.1.1.2 Developer shall 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 Site for the Project.

10.1.1.9 When requested, Developer will prepare meeting minutes.

10.1.1.10 Prepare schedule for preconstruction deliverables, subject to District's approval, and provide preconstruction deliverables within time frames of approved preconstruction schedule.

10.1.2 Review of Design Documents.

10.1.2.1 Review Project design and budget with District and Architect based on 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 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;

10.1.2.1.4 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.

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

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 District 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 construction activities. Developer shall further investigate, recommend and prepare a schedule for the 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 Site with the Architect and the design team as needed.

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 GMP in accordance with the lease-leaseback agreement forms, including the requirement that 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 Each phase 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 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 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 order based on best value score.

10.1.5.10.6 The minimum number of bona fide bids from contractors for a specific trade shall be as follows:

10.1.5.10.6.1 Two (2) bids for subcontracts up to One Hundred Thousand Dollars ($100,000);

10.1.5.10.6.2 Three (3) bids for subcontracts over One Hundred Thousand Dollars ($100,000).

10.1.5.10.7 If Developer intends to propose to self-perform portion(s) of the construction of the Project, it must receive the District's prior written approval. If approved, Developer must provide its pricing (its bid) to the District twenty-four (24) hours prior to Developer's receipt of Subcontractor bids for those portion(s) of the Work.

10.1.5.10.7.1 Regardless of the scope of work and not in any way reducing the number of Subcontractor bids based on the other requirements of the Contract Documents, the minimum number of bona fide bids from Subcontractors for scope(s) of Work that Developer is bidding to self-perform shall be Two (2) Bids, not including Developer's pricing/bid.

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 [AMOUNT IN WORDS] DOLLARS ($[AMOUNT IN NUMBERS]), 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 continue with 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 work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division

3 of the Business and Professions Code and for which Division of the State Architect approval is required can be performed before receipt of the required Division of the State Architect approval.

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

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

11.1.3 Schedule of Values

Developer will provide 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 Two Thousand Dollars ($2,000) 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 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**.

11.1.7 Labor Compliance Monitoring and Enforcement by Department of Industrial Relations

This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code section 1771.4 and Title 8 of the California Code of Regulations. Developer specifically acknowledges and understands that it shall perform the Work of this Contract while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code.

12. Maintenance

Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the 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 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

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

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, or in connection with, 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 coverage, and Automobile Liability coverage including owned, non-owned, and hired automobiles, 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 If Developer's underlying policy limits are less than required, subject to 15.1.2.3 below, 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 in order to satisfy, in aggregate with its underlying policy, the insurance requirements herein.

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** 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 brings Developer'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 Developer except where smaller minimum limits are permitted as set forth below.

15.1.4 Workers' Compensation and Employer's Liability Insurance

15.1.4.1 In accordance with provisions of section 3700 of the California Labor Code, 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 Employer's 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 Employer's 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 warrants that any retroactive date applicable to coverage under the policy shall predate 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 the following, or other language acceptable to the District:

"This policy shall not be canceled and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of cancellation by the insurance carrier. Date of cancellation 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 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 All endorsements shall waive any right to subrogation against any of the named additional insureds.

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 Developer's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

15.1.7.7 No policy shall be amended, canceled, or modified, and the coverage amounts shall not be reduced, until Developer or Developer's broker has provided written notice to District, Architect, and Construction Manager stating date of the amendment, modification, cancellation or reduction, and a description of the change. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.

15.1.7.8 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Developer's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by 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 Developer and all Subcontractors for all claims made.

15.1.7.9 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).

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

15.1.7.11 All policies shall be written on an occurrence form.

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

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

15.1.7.14 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 Developer pursuant to this Facilities Lease.

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15.1.8 Insurance Policy Limits

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

COMMERCIAL GENERAL LIABILITY	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	$5,000,000 per occurrence; $10,000,000 in aggregate
AUTOMOBILE LIABILITY – ANY AUTO	Combined Single Limit	$2,000,000
WORKERS' COMPENSATION		Statutory limits pursuant to State law
EMPLOYER'S LIABILITY		$3,000,000
POLLUTION LIABILITY		$1,000,000 per claim; $2,000,000 aggregate
BUILDER'S RISK (COURSE OF CONSTRUCTION)		Issued for the value and scope of Work indicated herein.
PROPERTY OF OTHERS		Issued for the value and scope of Work stored off-site.
PROFESSIONAL LIABILITY		$2,000,000
SEXUAL ABUSE AND MOLESTATION		$1,000,000 per occurrence

If Developer normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Developer hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

The limits of insurance for those subcontractors whose subcontract does not exceed One Million Dollars ($1,000,000) shall not be less than the following amounts:

COMMERCIAL GENERAL LIABILITY	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	$2,000,000 per occurrence; $4,000,000 in aggregate
AUTOMOBILE LIABILITY - ANY AUTO	Combined Single Limit	$1,000,000
WORKERS COMPENSATION		Statutory limits pursuant to State law
EMPLOYERS' LIABILITY		$1,000,000
PROFESSIONAL LIABILITY		$1,000,000
SEXUAL ABUSE AND MOLESTATION		$1,000,000 per occurrence

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.

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 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 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, the Architect(s) and Construction Manager(s), their respective consultants, separate contractors, board members, officers, representatives, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, injury, damages, losses, and expenses ("Claims"), including but not limited to attorney's fees and costs, caused by, arising out of, resulting from, or incidental to, in whole or in part, the performance of the Work under this Contract by Developer or its Subcontractors, vendors and/or suppliers. However, Developer's indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent the Claim(s) is/are caused wholly by the active negligence or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. This indemnification and hold harmless obligation of Developer shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist or arise as to any Indemnitee or other person described herein. This indemnification and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Developer to comply with any law and/or provision of the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Developers obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR.

16.2 To the furthest extent permitted by California law, Developer shall also defend Indemnitees, at its own expense, including but not limited to attorneys' fees and costs, against all Claims caused by, arising out of, resulting from, or incidental to, in whole or in part, the performance of the Work under this Facilities Lease by Developer, its Subcontractors, vendors, or suppliers. However, without impacting Developer's obligation to provide an immediate and ongoing defense of Indemnitees, Developer's defense obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction. The District shall have the right to accept or reject any legal representation that Developer proposes to defend the Indemnitees. If any Indemnitee provides its own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Developer shall reimburse such Indemnitee for any expenditures. Developer's defense obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnitee or other person described herein. Developer's defense obligation includes, but is not limited 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 DIR. Developer shall give prompt notice to the District in the event of any Claim(s).

16.3 Without limitation of the provisions herein, if Developer's obligation to indemnify and hold harmless the Indemnitees or its obligation to defend Indemnitees as provided herein shall be determined to be void or unenforceable, in whole or in part, it is the intention of the Parties that these circumstances shall not otherwise affect the

validity or enforceability of Developer's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein. Further, Developer shall be and remain fully liable on its agreements and obligations herein to the fullest extent permitted by law.

16.4 Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Developer of the receipt of any third-party Claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.

16.5 In any and all Claims against any of the Indemnitees by any employee of Developer, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, 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 Developer or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

16.6 The District may retain so much of the moneys due to Developer as shall be considered necessary, until disposition of any such Claims or until the District, Architect(s) and Construction Manager(s) have received written agreement from Developer that Developer will unconditionally defend the District, the Architect(s) and Construction Manager(s), their respective officers, agents and employees, and pay any damages due by reason of settlement or judgment.

16.7 Developer's defense and indemnification 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 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 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 Site is taken permanently under the power of eminent domain and 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 Site is taken permanently, or if all of the Project and the 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 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 to **Exhibit D** to the Facilities Lease as indicated in the GMP provisions indicated in **Exhibit C** to this Facilities Lease.

19.4 The District shall notify 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 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 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.

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 Request for Assurances

If District at any time reasonably believes Developer is or may be in default under this Contract, District may in its sole discretion notify Developer of this fact and request written assurances from Developer of performance of Work and a written plan from Developer to remedy any potential default under the terms of this Contract that the District may advise Developer of in writing. Developer shall, within ten (10) calendar

days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Developer's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.

22.3 District's Right to Terminate Developer for Cause

22.3.1 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 Developer's right to perform the work of the Facilities Lease based upon any of the following:

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

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

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

22.3.1.4 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 Developer without its consent, and the petition not dismissed within sixty (60) days; or

22.3.1.5 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

22.3.1.6 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

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

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

22.3.1.9 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

22.3.1.10 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.

22.3.2 Notification of Termination

22.3.2.1 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 Developer's right to perform the Work of this Facilities Lease. This notice will contain the reasons for termination.

22.3.2.2 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; provided, however, 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.

22.3.2.3 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:

22.3.2.3.1 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

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

22.3.2.4 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.

22.3.2.5 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.

22.3.3 Effect of Termination

22.3.3.1 If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Site and any improvements built upon the 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.

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

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

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

22.3.3.3 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. Developer and its Surety shall be liable upon the performance bond for all damages caused the District by reason of Developer's failure to complete the Work under this Facilities Lease.

22.3.3.4 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 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.

22.3.3.5 In the event termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

22.3.3.6 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 Developer or any impact or impairment of Developer's bonding capacity.

22.3.3.7 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.

22.3.3.8 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 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, 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.

22.3.3.9 All payments due 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 Developer.

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

22.4 Termination of Developer for Convenience

22.4.1 District in its sole discretion may terminate the Facilities Lease in whole or in part upon three (3) days written notice to Developer.

22.4.2 Upon notice, Developer shall:

22.4.2.1 Cease operations as directed by the District in the notice;

22.4.2.2 Take necessary actions for the protection and preservation of the Work as soon as possible; and

22.4.2.3 Terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

22.4.3 Within 30 days of the notice, Developer shall submit to the District a payment application for the actual cost for labor, materials, and services

performed, including all Developer's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Developer shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

22.4.4 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.

22.5 Developer Remedies Upon District Default

22.5.1 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:

22.5.1.1 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.

22.5.1.2 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.

22.5.2 Remedies on District's Default

If there has been an Event of Default on the District's part, 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.

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

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

22.5.2.1.2 If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal

and a Developer appraisal for the Project and Site, both prepared by MAI-certified appraisers.

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

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

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

22.5.2.3 District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Developer to re-rent the Project and 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 and Site shall vest in Developer as indicated herein.

22.5.3 District's Continuing Obligation

Unless there has been damage, destruction, a Taking, or 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.

22.5.4 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.

22.6 Emergency Termination Pursuant to Public Contracts Act of 1949

22.6.1 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.

22.6.1.1 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.

22.6.1.2 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.

22.6.2 Compensation to 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.

22.7 Suspension of Work

22.7.1 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 Developer.

22.7.1.1 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:

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

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

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

22.7.1.1.4 The delay could not have been avoided or mitigated by Developer's reasonable diligence.

22.7.1.2 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. Limitation of District Liability

District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

24. Notices

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

If to District:	**If to Developer:**
Fremont Union High School District 589 W. Fremont Avenue Sunnyvale, CA 94087 Attn: Christine Mallery	[Developer] [Address] Attn: [Name, Title]

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

25. Binding Effect

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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 Site is located.

33. 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.

34. 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.

35. 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.

36. Further Assurances

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

37. 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.

38. Time of the Essence

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

39. 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.

40. 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.

[SIGNATURES ON NEXT PAGE]

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: _____, 20__	Dated: _____, 20__
Fremont Union High School District	[Developer]
By: _____	By: _____
Name: Christine Mallery	Name: _____
Title: Chief Business Official, Associate Superintendent	Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

Fremont High School New Art, Design, and Engineering Building Project
575 W. Fremont Ave.
Sunnyvale, CA 94087

<TO BE INSERTED>

EXHIBIT B

DESCRIPTION OF PROJECT

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

<TO BE INSERTED AT A LATER DATE>

EXHIBIT C

GUARANTEED MAXIMUM PRICE AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

Attached are the terms and provisions related to Site Lease payments, the Facilities Lease, the Guaranteed Maximum Price and other related cost, funding, and payment provisions.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBIT FOLLOWS]

EXHIBIT C

GUARANTEED MAXIMUM PRICE AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

1. Site Lease Payments

As indicated in the Site Lease, Developer shall pay One Dollar ($1.00) to the District as consideration for the Site Lease.

2. Guaranteed Maximum Price

Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for an amount to be determined after the Division of the State Architect ("DSA") approves the plans and specifications for all phases of the Project ("Guaranteed Maximum Price"). As this Project shall include multiple phases, each phase shall have its own GMP ("Phase GMP"), and the Guaranteed Maximum Price shall consist of the total of all Phase GMPs.

2.1 Cost of the Work

The term Cost of the Work shall mean the costs necessarily incurred in the proper performance of the Work contemplated by the Contract Documents. Such costs shall be at rates no higher than the standard paid at the place of the Project except with the prior consent of the District. The Cost of the Work shall include only the items set forth in this Section 2 and approved by the District.

2.1.1 General Conditions

The General Conditions as set forth in **Attachment 1** hereto shall be included in a progress billing as incurred. Said rates shall include all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Developer for insurance, permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, incentives to the extent contemplated in **Attachment 1**, whether required by law or collective bargaining agreements or otherwise paid or provided by Developer to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the District shall be entitled to a reduction in the cost of General Conditions based on the rates set forth in **Attachment 1**.

2.1.2 Subcontract Costs

Payments made by the Developer to Subcontractors (inclusive of the Subcontractor's bonding, if required, and insurance costs, which shall be included in the subcontract amount), which payments shall be made in accordance with the requirements of the Contract Documents.

2.1.3 Developer-Performed Work

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

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

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

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

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

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

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

2.1.3.7 Rental charges for temporary facilities, machinery, equipment, vehicles and vehicle expenses, and hand tools not

customarily owned by construction workers that are provided by the Developer at the site, whether rented from the Developer or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof and costs of Developer's Project field office, overhead and general expenses including office supplies, parking, office equipment, and software. Rates and quantities of equipment rented shall be subject to the District's prior approval.

2.1.3.8 Costs of removal of debris from the site, daily clean-up costs and dumpster charges not otherwise included in the cost of the subcontracts which exceeds the clean-up provided under the General Conditions.

2.1.3.9 Costs of that portion of the reasonable travel, parking and subsistence expenses of the Developer's personnel incurred while traveling and discharging duties connected with the Work.

2.1.3.10 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the District.

2.1.4 Allowances

Because it is impossible at the time of execution of the Facilities Lease to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances for the Tasks/Work as noted here:

Task/Work	**Allowance Amount**
TBD	TBD
TBD	TBD
TBD	TBD
Total Allowance Amount	TBD

The District shall have sole discretion to authorize all expenditures from the Allowances. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive ("AED"). The Allowances are included in the Guaranteed Maximum Price. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work pursuant to **Exhibit D** to this Facilities Lease to the benefit of the District.

2.1.5 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 any Phase GMP or Guaranteed Maximum Price (as adjusted by Change Order) to be exceeded.

2.1.7 Developer's Fee

_____ percent (_____%) of the Cost of the Work as described in Sections 2.1.1, 2.1.2, 2.1.3, 2.1.4 and 2.1.5.

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 _____ percent (__%) of the Cost of the Work for insurance and _____ percent (__%) of the Cost of the Work for payment and performance bonds.

2.1.9 Contingency

2.1.9.1 The Guaranteed Maximum Price includes a Developer Contingency of _____ percent (_____%) of the Cost of the Work as described in Section 2.1.1, 2.1.2, and 2.1.3 for potential additional construction costs for unforeseen conditions that occur over the course of construction and/or scope gaps between the subcontract categories of the Work.

2.1.9.2 The Developer Contingency may be used for owner-directed scope changes.

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

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

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

2.3 Total Payment

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

2.4 Changes to Guaranteed Maximum Price

2.4.1 The Parties acknowledge that the Guaranteed Maximum Price, including all Phase GMPs, 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, or any Phase GMPs. 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 and/or Phase GMP 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, or Phase GMP as appropriate, for the unused portion of the Developer Contingency, if any.

2.4.4 Cost Savings

Developer shall work cooperatively with Architect, Construction Manager, subcontractors and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the Guaranteed Maximum Price shall be identified by Developer, and approved in writing by the District. If any cost savings require revisions to the Construction Documents, Developer shall work with the District and Architect with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. Developer shall be entitled to an adjustment of Contract Time for delay in completion caused by any cost savings adopted by District pursuant to **Exhibit D**, if requested in writing before the approval of the cost savings.

2.4.4.1 [RESERVED]

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"). The District shall withhold an amount equal to one-third (1/3) of the Loan Amount as indicated in **Attachment 3** to **Exhibit C** from the last three (3) payments to Developer for its Work on the Project. Otherwise, the 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. The withholding for the Loan Amount shall be separate from and in addition to withholding for or escrow of retention.

4. Lease Payments

Upon execution of the Memorandum of Commencement Date, the form of which is attached to the Facilities Lease as **Exhibit E**, the District shall commence making lease payments to Developer in accordance with the Schedule attached hereto as **Attachment 3**.

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

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

4.3 Fair Rental Value

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

4.4 Each Lease Payment Constitutes a Current Expense of the District

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

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

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

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

4.4.5 The Developer cannot, under any circumstances, accelerate the District's payments under the Facilities Lease.

5. District's Purchase Option

5.1 If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease by paying the balance of the "Loan Amount" identified in **Attachment 3**, which is exclusive of interest that would have otherwise been owed, as of the date the option is exercised ("Option Price"). Said payment shall be made on or before the date on which the District's lease payment would otherwise be due for that month ("Option Date").

5.2 District shall provide to Developer a written notice no less than ten (10) days prior to the Option Date. The notice will include that District is exercising its option to purchase the Project as set forth above on the Option Date. If the District exercises this option, the District shall pay directly to Developer the Option Price on or prior to the Option Date and Developer shall at that time deliver to District an executed Termination Agreement and Quitclaim Deed in recordable form to terminate this

Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

5.3 Under no circumstances can the first Option Date be on or before ninety (90) days after the Developer completes the Project and the District accepts the Project.

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ATTACHMENT 1

GENERAL CONDITIONS COSTS

[TO BE INSERTED]

ATTACHMENT 2

GUARANTEED MAXIMUM PRICE

[TO BE INSERTED]

ATTACHMENT 3

SCHEDULE OF LEASE PAYMENTS

Amortization Schedule

Loan Amount:	$
Interest:	__% Annual
Term in Months	12.00
Payment Frequency	Monthly

Payment #	Total Payment	Principal Payment	Interest Payment	Balance
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
Totals				

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS

Attached are the general construction terms and conditions for the Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBIT FOLLOWS]

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS FOR THE FOLLOWING PROJECT:

FREMONT HIGH SCHOOL NEW ART, DESIGN, AND ENGINEERING BUILDING PROJECT

BY AND BETWEEN

FREMONT UNION HIGH SCHOOL DISTRICT

AND

[DEVELOPER]

Dated as of _____, 20__

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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 or air conditions in excess of the norm for the location and time of year it occurred based on the closest weather station data averaged over the past five years, (2) that is unanticipated and would cause unsafe work conditions and/or is unsuitable for scheduled work that should not be performed during inclement weather (i.e., exterior finishes), and (3) at the Project.

1.1.2 Allowance Expenditure Directive. Written authorization for expenditure of allowance, if any.

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

1.1.4 Architect (or "Design Professional in General Responsible Charge"). The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the Design Professional in General Responsible Charge as defined in DSA PR 13-02 on this Project or the Architect's authorized representative.

1.1.5 As-Builts. Digitally prepared and reproducible drawings using the web-based ProCore application, or comparable, to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See **Record Drawings.**

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

1.1.7 Change Order. A written order to Developer authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Maximum Price or Contract Time.

1.1.8 Claim. A Dispute that remains unresolved at the conclusion of all the applicable Dispute Resolution requirements provided herein.

1.1.9 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.

1.1.10 Construction Change Directive. A written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work.

1.1.11 Construction Manager. The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

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

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

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

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

1.1.15.1 Non-Collusion Declaration

1.1.15.2 Iran Contracting Act Certification

1.1.15.3 Site Lease

1.1.15.4 Facilities Lease, including Exhibits A-H

1.1.15.4.1 Iran Contracting Act Certification (if applicable)

1.1.15.4.2 Federal Debarment Certification (if applicable)

1.1.15.4.3 Federal Byrd Anti-Lobbying Certification (if applicable)

1.1.15.4.4 Performance Bond

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

1.1.15.4.6 Workers' Compensation Certification

1.1.15.4.7 Prevailing Wage Certification

1.1.15.4.8 Criminal Background Investigation/Fingerprinting Certification

1.1.15.4.9 Drug-Free Workplace Certification

1.1.15.4.10 Tobacco-Free Environment Certification

1.1.15.4.11 Disabled Veterans Business Enterprise Participation Certification (if applicable)

1.1.15.4.12 Roofing Project Certification (if applicable)

1.1.15.4.13 Hazardous Materials Procedures and Requirements

1.1.15.4.14 Hazardous Materials Certification (if applicable)

1.1.15.4.15 Lead-Based Materials Certification (if applicable)

1.1.15.4.16 Imported Materials Certification (if applicable)

1.1.15.4.17 Skilled and Trained Workforce Certification

1.1.15.4.18 Project Labor Agreement (if applicable)

1.1.15.4.19 Registered Subcontractors List

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

1.1.15.4.21 Guarantee Form

1.1.15.4.22 Agreement and Release of Any and All Claims

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

1.1.15.6 Any and all addenda to any of the above documents

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

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

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

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

1.1.19 Department of Industrial Relations (or "DIR"). DIR is responsible, among other things, for labor compliance monitoring and enforcement of California prevailing wage laws and regulations for public works contracts.

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

1.1.21 Developer. The person or persons identified in the Facilities Lease as contracting to perform the Work to be done under this Contract, or the legal representative of such a person or persons.

1.1.22 Dispute. A separate demand by Developer for a time extension, or payment of money or damages arising from Work done by or on behalf of Developer pursuant to the Contract and payment of which is not otherwise

expressly provided for or Developer is not otherwise entitled to; or an amount of payment disputed by the District.

1.1.23 District. The public agency or the school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:

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

1.1.23.2 Direct the Construction Manager or the Architect to communicate with or direct Developer on matters for which the Contract Documents indicate the District will communicate with or direct Developer.

1.1.24 Drawings (or "Plans"). The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.

1.1.25 DSA. Division of the State Architect.

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

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

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

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

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

1.1.31 Municipal Separate Storm Sewer System (or "MS4"). A system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

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

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

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

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

1.1.36 Program Manager. The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for the Project that is the subject of the Contract Documents, then all references to Program Manager herein shall be read to refer to District.

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

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

1.1.39 Project Labor Agreement (or "PLA" or Project Stabilization Agreement or "PSA"). A prehire collective bargaining agreement in accordance with Public Contract Code section 2500 *et seq*. that establishes terms and conditions of employment for a specific construction project or projects and/or is an agreement described in Section 158(f) of Title 29 of the United States Code.

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

1.1.41 Provide. Shall include "provide complete in place," that is, "furnish and install," and "provide complete and functioning as intended in place" unless specifically stated otherwise.

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

1.1.43 Record Drawings. Unless otherwise defined in the Special Conditions, Reproducible drawings (or Plans) prepared pursuant to the requirements of the

Contract Documents, that reflect all changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed upon completion of the Project. See also **"As-Builts."**

1.1.44 Request for Information (or "RFI"). A written request prepared by Developer requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that Developer believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.

1.1.45 Request for Substitution for Specified Item. A request by Developer to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.

1.1.46 Safety Orders. Written and/or verbal orders for construction issued by the California Division of Occupational Safety and Health ("Cal/OSHA") or by the United States Occupational Safety and Health Administration ("OSHA").

1.1.47 Safety Plan. Developer's safety plan specifically adapted for the Project. Developer's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these Construction Provisions.

1.1.48 Samples. Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

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

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

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

1.1.52 State. The State of California.

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

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

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

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

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

1.2 Laws Concerning the Contract Documents

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 ensure uninterrupted progress of Work and shall be stored properly and protected from the elements, theft, vandalism, or other loss or damage as required.

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

1.8.5 Developer shall, after award of the Project by District and after relevant submittals have been reviewed, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Developer shall, upon five (5) days' demand from District, present documentary evidence showing that orders have been placed.

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

1.8.7 Developer warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the Site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Developer further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract Documents shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Developer may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Developer shall advise District as to owner thereof.

1.8.8 Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by Developer for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due Developer in hands of District (e.g., Stop Payment Notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for Work when no formal contract is entered into for such material.

1.8.9 Title to new materials and/or equipment for the Work of the Contract Documents and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of the Contract Documents and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract Documents. Should the District, in its discretion, allow

Developer to store materials and/or equipment for the Work off-site, Developer will store said materials and/or equipment at a bonded warehouse and with appropriate insurance coverage at no cost to District. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

1.8.10 [Reserved]

2. [Reserved]

3. Architect

3.1 The Architect shall represent the District during the Project and will observe the progress and quality of the Work on behalf of the District. Architect shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents and to the extent determined by District. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to ensure the proper execution of the Contract Documents.

3.2 Architect shall, with the District and on behalf of the District, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with the District, interpret all other Contract Documents.

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

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

4. Construction Manager

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

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

agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

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

5. Inspector, Inspections, and Tests

5.1 Project Inspector

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

5.1.2 No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Developer shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials, including, but not limited to, submission of form DSA 156 (or the most current version applicable at the time the Work is performed) to the Project Inspector at least 48 hours in advance of the commencement and completion of construction of each and every aspect of the Work. Forms are available on the DSA's website at: http://www.dgs.ca.gov/dsa/Forms.aspx. Inspection of Work shall not relieve Developer from an obligation to fulfill the Contract Documents. Project Inspector(s) and the DSA are authorized to suspend work whenever Developer and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Developer shall instruct its Subcontractors and employees accordingly.

5.1.3 If Developer and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-Site, this shall only be done if it is allowable pursuant to applicable regulations and DSA approval, if the Project Inspector(s) agree to do so, and at the expense of Developer.

5.2 Tests and Inspections

5.2.1 Tests and Inspections shall comply with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, and with the provisions of the Specifications.

5.2.2 The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory and not by Developer. Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection. This notice shall be provided, at a minimum, forty-eight (48) hours

prior to the inspection of the material that needs to be tested and, at a minimum, seventy-two (72) hours prior to any special or off-site inspection.

5.2.3 Developer shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents that must by terms of the Contract Documents be tested so that the District may arrange for the testing of same at the source of supply. This notice shall be provided, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

5.2.4 Any material shipped by Developer from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

5.2.5 The District will select the testing laboratory and pay for the costs for all tests and inspections, except those inspections performed at Developer's request and expense. Developer shall reimburse the District for any and all laboratory costs or other testing costs for any materials found to be not in compliance with the Contract Documents. At the District's discretion, District may elect to deduct laboratory or other testing costs for noncompliant materials from the Guaranteed Maximum Price, and such deduction shall not constitute a withholding.

5.3 Costs for After Hours and/or Off-Site Inspections

If Developer performs Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be borne by Developer and may be invoiced to Developer by the District or the District may deduct those expenses from the next Tenant Improvement Payment.

6. Developer

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

6.1 Status of Developer

6.1.1 Developer 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 Developer's activities to determine compliance with the terms of the Contract Documents.

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

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

6.1.4 Developer represents that Developer and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7.

6.1.5 [Reserved]

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

6.1.7 [Reserved]

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

6.2 Project Inspection Card(s)

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

6.3 Developer's Supervision

6.3.1 During progress of the Work, Developer shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, an experienced and competent project manager and construction superintendent who are employees of Developer, to whom the District does not object and whom shall be fluent in English, written and verbal.

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

6.3.3 Developer acknowledges the quality and qualifications of the Key Personnel were important factors in District's selection of Developer for the Project. Developer and District agree that the personal services of the Key

Personnel are a material term of the Contract Documents. Developer and District agree further that the substitution or removal or change in role or level of effort of such Key Personnel would result in damages to the District, the measure of which would be impractical or extremely difficult to fix. In lieu such damages, District and Developer have agreed to liquidated damages as described below:

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

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

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

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

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

6.3.6 Developer shall give efficient supervision to Work, using its best skill and attention. Developer shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Developer or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). Developer shall have responsibility for discovery of errors, inconsistencies, or omissions.

6.3.7 All contractors doing work on the Project will provide their workers with identification badges. These badges will be worn by all members of the contractor's staff who are working in a District facility.

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

6.3.7.1.1 Name of contractor

6.3.7.1.2 Name of employee

6.3.7.1.3 Contractor's address and phone number

6.3.7.2 Badges are to be worn when Developer or his/her employees are on site and must be visible at all times. Contractors must inform their employees that they are required to allow District employees, the Architect, the Construction Manager, the Program Manager, or the Project Inspector to review the information on the badges upon request.

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

6.4 Duty to Provide Fit Workers

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

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

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

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

6.5 Field Office

6.5.1 Developer shall provide on the Site a temporary office.

6.6 Purchase of Materials and Equipment

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

6.7 Documents on Work

6.7.1 Developer shall at all times keep on the Site, or at another location as the District may authorize in writing, one legible copy of all Contract

Documents, including Addenda and Change Orders, and Titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Developer shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, Title 24, Part 1, California Code of Regulations, Section 4-343.) Developer shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Titles 8 and 17. Developer shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of Title 24.

6.7.2 Daily Job Reports

6.7.2.1 Developer shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by Developer's employee(s) who are present on Site, and must include, at a minimum, the following information:

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

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

6.7.2.1.3 The weather conditions on that day.

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

6.7.2.1.5 A list of each Developer employee working on that day and the total hours worked for each employee.

6.7.2.1.6 A complete list of all equipment on Site that day, whether in use or not.

6.7.2.1.7 A complete list of all materials, supplies, and equipment delivered on that day, and verification that all materials, supplies, and equipment comply with the Contract Documents and are properly stored.

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

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

6.7.2.2 Each day Developer shall provide a copy of the previous day's Daily Job Report to the District or the District's Construction Manager.

6.8 Preservation of Records

Developer shall maintain, and District shall have the right to inspect, Developer's financial records for the Project, including, without limitation, Job Cost Reports for the Project in compliance with the criteria set forth herein. The District shall have the right to examine and audit all Daily Job Reports or other Project records of Developer's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, Job Cost Reports, payroll, payment, timekeeping and tracking documents; and as it pertains to change orders, all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of Developer, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. Developer shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Facilities Lease. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.9 Integration of Work

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

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

6.9.3 Developer and all Subcontractors shall take all field dimensions required in performance of the Work, and shall verify all dimensions and conditions on the Site. All dimensions affecting proper fabrication and installation of all Work must be verified prior to fabrication by taking field measurements of the true conditions. If there are any discrepancies between dimensions in drawings and existing conditions which will affect the Work, Developer shall bring such discrepancies to the attention of the District and Architect for adjustment before proceeding with the Work. In doing so, it is recognized that Developer is not acting in the capacity of a licensed design professional, and that Developer's examination is made in good faith to facilitate construction and does not create an affirmative responsibility of a design professional to detect errors, omissions or inconsistencies in the Contract Documents or to ascertain compliance with applicable laws, building codes or regulations. However, nothing in this provision shall abrogate Developer's responsibilities for discovering and reporting any error, inconsistency, or omission pursuant to the Contract within Developer's standard of care including, without limitation, any applicable laws, ordinance, rules, or regulations. Following receipt of written notice from

Developer, the District and/or Architect shall inform Developer what action, if any, Developer shall take with regard to such discrepancies.

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

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

6.10 Notifications

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

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

6.11 Obtaining of Permits, Licenses and Registrations

6.11.1 Developer shall secure and pay for any permits (except DSA), licenses, registrations, approvals, and certificates necessary for prosecution of Work, including but not limited to those listed in the Special Conditions, **Exhibit D-1**, if any, before the date of the commencement of the Work or before the permits, licenses, registrations, approvals and certificates are legally required to continue the Work without interruption. Developer shall obtain and pay, only when legally required, for all licenses, approvals, registrations, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract Documents. All final permits, licenses, registrations, approvals and certificates shall be delivered to District before demand is made for final payment. The costs associated with said permits, licenses, registrations, approvals and certificates shall be direct reimbursement items and are not subject to any markup.

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

6.11.2.1 Contractor acknowledges that all California school districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as

Permit Registration Documents ("PRDS") with the Regional Water Control Board ("Storm Water Pollution Prevention Plan" or "SWPPP").

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

6.11.2.3 Contractor shall provide a Qualified Storm Water Practitioner ("QSP") at no additional cost to the District, who shall be onsite and implement and monitor any and all SWPPP requirements applicable to the Project, including but not limited to:

6.11.2.3.1 All required visual observations, sampling, analysis, reporting and record keeping, including any Numeric Action Levels ("NALs"), if applicable;

6.11.2.3.2 Rain Event Action Plan ("REAP") at least forty-eight (48) hours prior to any forecasted rain event requiring implementation of the REAP, including any erosion and sediment control measures needed to protect all exposed portions of the site, if applicable;

6.11.2.3.3 Active Treatment System ("ATS"), if applicable; and

6.11.2.3.4 Best management practices ("BMPs").

6.12 Royalties and Patents

6.12.1 Developer shall obtain and pay, when legally required, all royalties and license fees necessary for prosecution of Work before the earlier of the date of the commencement of the Work or the date the license is legally required to continue the Work without interruption. Developer shall defend suits or claims of infringement of patent, copyright, or other rights and shall hold the District, Construction Manager and the Architect harmless and indemnify them from loss on account thereof except when a particular design, process, or make or model of product is required by the Contract Documents. However, if Developer has reason to believe that the required design, process, or product is an infringement of a patent or copyright, Developer shall indemnify and defend the District, Construction Manager and Architect against any loss or damage.

6.12.2 The review by the District, Construction Manager or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be only as to its adequacy for the Work and shall not constitute approve use by Developer in violation of any patent or other rights of any person or entity.

6.13 Work to Comply with Applicable Laws and Regulations

6.13.1 Developer shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and

specified, including but not limited to the appropriate statutes and administrative code sections. If Developer observes that Drawings and Specifications are at variance with any applicable laws, ordinances, rules and regulations, or should Developer become aware of the development of conditions not covered by Contract Documents that may result in finished Work being at variance therewith, Developer shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in this **Exhibit D** for changes in Work.

6.13.1.1 National Electrical Safety Code, U. S. Department of Commerce

6.13.1.2 National Board of Fire Underwriters' Regulations

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

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

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

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

6.13.1.7 Americans with Disabilities Act

6.13.1.8 Education Code of the State of California

6.13.1.9 Government Code of the State of California

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

6.13.1.11 Public Contract Code of the State of California

6.13.1.12 California Art Preservation Act

6.13.1.13 U. S. Copyright Act

6.13.1.14 U. S. Visual Artists Rights Act

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

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

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

6.13.5 [Reserved]

6.14 Safety/Protection of Persons and Property

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

6.14.2 Developer to provide safe access for staff and students at any time, and to provide barricades, sound walls, signage, fencing, and other reasonably necessary protective measures, as necessary, to protect staff and students during construction.

6.14.3 The wearing of hard hats will be mandatory at all times for all personnel on Site. Developer shall supply sufficient hard hats to properly equip all employees and visitors.

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

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

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

6.14.7 Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract Documents and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Developer's risk.

6.14.8 Developer shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Developer shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.

6.14.9 Hazards Control –Developer shall store volatile wastes in approved covered metal containers and remove them from the Site daily. Developer shall prevent accumulation of wastes that create hazardous conditions. Developer shall provide adequate ventilation during use of volatile or noxious substances.

6.14.10 Developer shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to District by Developer.

6.14.11 Developer shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Developer shall correct such violation promptly.

6.14.12 Developer shall comply with any District storm water requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

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

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

6.14.15 All connections to public utilities and/or existing on-site services, including, without limitation, internet, phone, and data connections, shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

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

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

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

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

6.14.20 Developer, Developer's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. Developer is also responsible for ensuring workers refrain from wearing inappropriate clothing and/or logos on the Project. District may require Developer to temporarily or permanently remove non-complying persons from Project Site.

6.14.21 Developer shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Developer shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to District.

6.14.22 In the event that Developer enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Developer shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the District prior to the commencement of any Work on or about the adjacent property. Developer shall also indemnify the District as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

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

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

6.15.3 Developer shall provide a Qualified SWPPP Practitioner (QSP) at no additional cost to the District, 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 All required visual observations, sampling, analysis, reporting and record keeping, including any Numeric Action Levels (NALs), if applicable;

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

6.15.3.3 Active Treatment System (ATS), if applicable; and

6.15.3.4 Best management practices (BMPs).

6.16 Working Evenings and Weekends

Developer may be required to work increased hours, evenings, and/or weekends at no additional cost to the District. Developer shall give the District forty-eight (48) hours' notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any increased or additional Inspector charges as a result of Developer's increased hours, or evening and/or weekend work.

6.17 Cleaning Up

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

6.17.2 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 continued operations. 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 Developer a 24-hour written notice to mitigate the condition.

6.17.4 Should Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District may, at its sole discretion, then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Maximum Price.

6.18 No Relief from Obligations Based on Review by Other Persons

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

7. Subcontractors

7.1 Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors as indicated in Developer's Submittals and Schedules Section herein.

7.2 No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract Documents.

7.3 Developer agrees to bind every Subcontractor by terms of the Contract Documents as far as those terms that are applicable to Subcontractor's work including, without limitation, all labor, wage & hour, apprentice and related provisions and requirements. If Developer subcontracts any part of the Work called for by the Contract Documents, Developer shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, including Subcontractor caused Project delays, as it is for acts and omissions of persons directly employed by Developer. The divisions or sections of the Specifications and/or the arrangements of the drawings are not intended to control Developer in dividing the Work among Subcontractors or limit the work performed by any trade.

7.4 District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract Documents shall not in any way relieve Developer of any obligations under the Contract Documents and no such consent shall be deemed to waive any provisions of the Contract Documents.

7.5 Developer is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein including, without limitation, section 1775 and Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

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

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

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

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

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

8. Other Contracts/Contractors

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

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

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

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

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

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

9. Drawings and Specifications

9.1 A complete list of all Drawings that form a part of the Contract Documents are to be found as an index on the Drawings themselves, and/or may be provided to Developer and/or in the Table of Contents.

9.2 Materials or Work described in words that so applied have a well-known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

9.3 Trade Name or Trade Term

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Developer that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

9.4 The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.

9.5 Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if Developer observes that Drawings and Specifications are in conflict with the Contract Documents, Developer shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6 Figured dimensions shall be followed in preference to scaled dimensions, and Developer shall make all additional measurements necessary for the work and shall be responsible for their accuracy. Before ordering any material or doing any work, each Developer shall verify all measurements at the building and shall be responsible for the correctness of same.

9.7 Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to

the District for interpretation. If a conflict exists in the Contract Documents, these Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity of material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications.

9.8 Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract Documents within the limits specified.

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

9.10 Ownership of Drawings

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

10. Developer's Submittals and Schedules

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

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

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

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

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

10.1.4 The District shall have the right at any time to discuss with Developer revisions to the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

10.1.5 All 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 with Construction (unless otherwise specified in the Specifications), Developer shall prepare and submit to the District for review, in a form supported by sufficient data to substantiate its accuracy as the District may require:

10.1.6.1 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.

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

10.1.6.2 Preliminary Schedule of Values

A preliminary schedule of values for all of the Work, which must include quantities and prices of items aggregating the Guaranteed Maximum Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Unless the Special Conditions contain different limits, this preliminary schedule of values shall include, at a minimum, the following information and the following structure:

10.1.6.2.1 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 District 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 phase and/or building, as applicable

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%.

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

10.1.6.2.4 Notwithstanding any provision of the Contract Documents to the contrary, payment of Developer's overhead,

supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid based on percentage complete, with the disbursement of Progress Payments and the Final Payment.

10.1.6.2.5 Developer shall certify that the preliminary schedule of values as submitted to the District is accurate and reflects the costs as developed in preparing Developer's bid. For example, without limiting the foregoing, Developer shall not "front-load" the preliminary schedule of values with dollar amounts greater than the value of activities performed early in the Project.

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

10.1.6.2.7 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 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 may be reviewed by District in ProCore and shall be forwarded to the Architect by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those

submittals shall be forwarded to the District so as not to delay the Construction Schedule. Upon request by the District, Developer shall provide an electronic copy of all submittals to the District. All submittals shall be submitted no later than ninety (90) days after the Notice to Proceed with Construction.

10.1.6.5 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 Developer's and its Subcontractors' employees.

10.1.6.6 Complete Registered Subcontractor List

The name, address, telephone number, facsimile number, California State Contractors License number, classification, DIR registration number, and monetary value of all Subcontracts of any tier for parties furnishing labor, material, or equipment for completion of the Project.

10.2 Monthly Progress Schedule(s)

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

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

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

10.2.4 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 discuss with Developer revisions to the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

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

10.3 Material Safety Data Sheets (MSDS)

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

10.4 Submittals

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

11. Site Access, Conditions, And Requirements

11.1 Site Investigation

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

11.2 Soils Investigation Report

When a soils investigation report obtained from test holes at Site or for the Project is available, that report may be made available to Developer but shall not be a part of this Contract but shall not alleviate or excuse Developer's obligation to perform its own investigation. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract, and Developer may not rely thereon. Developer acknowledges that it has made a visual examination of the Site and has made whatever tests Developer deems appropriate to determine underground condition of soil. Although any such report is not a part of this Contract, recommendations from the report may

be included in the Drawings, Specifications, or other Contract Documents. It is Developer's sole responsibility to thoroughly review all Contract Documents, Drawings, and Specifications.

11.3 Access to Work

District and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Developer shall provide safe and proper facilities for such access so that District's representatives may perform their functions. District shall provide Developer adequate advance notice for access to active construction zones such that Developer may provide for safety measures to District and representatives.

11.4 Layout and Field Engineering

11.4.1 All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Developer at its expense. This Work shall be done by a qualified, California-registered civil engineer or licensed land surveyor approved in writing by District and Architect. Any required Record and/or As-Built Drawings of Site development shall be prepared by the approved civil engineer or licensed land surveyor.

11.4.2 Developer shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. District shall not be liable for any claim for allowances because of Developer's error or negligence in acquainting itself with the conditions at the Site.

11.4.3 Developer shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Developer shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

11.5 Utilities

Utilities shall be provided as indicated in the Specifications.

11.6 Sanitary Facilities

Sanitary facilities shall be provided as indicated in the Specifications.

11.7 Surveys

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

11.8 Regional Notification Center

Developer, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will

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

11.9 Existing Utility Lines

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

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

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

11.9.4 If Developer, while performing Work under this Contract, discovers utility facilities not identified by District in Contract Plans and Specifications, Developer shall immediately notify the District and the utility in writing. In the event Developer fails to immediately provide notice and subsequently causes damage to the utility facilities, the cost of repair for damage to above-mentioned visible facilities shall be borne by Developer.

11.10 Notification

Developer understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure

of Developer to promptly notify the District in writing, pursuant to these provisions, shall constitute Developer's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.11 Hazardous Materials

Developer shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

11.12 No Signs

Neither Developer nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences, trailers, offices, or elsewhere on the Site without specific prior written approval of the District.

12. Trenches

12.1 Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Maximum Price exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, Developer shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2 Excavation Safety

If such plan varies from the Shoring System Standards established by the Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

12.3 No Tort Liability of District

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

12.4 No Excavation without Permits

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

12.5 Discovery of Hazardous Waste and/or Unusual Conditions

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

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

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

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

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

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

13. Insurance and Bonds

13.1 Developer's Insurance

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

13.2 Contract Security – Bonds

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

13.2.1.1 Performance Bond

A bond in an amount at least equal to one hundred percent (100%) of Guaranteed Maximum Price as security for faithful performance of the Contract Documents.

13.2.1.2 Payment Bond

A bond in an amount at least equal to one hundred percent (100%) of the Guaranteed Maximum Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

13.2.2 Cost of bonds shall be included in the Guaranteed Maximum Price.

13.2.3 All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

14. Warranty/Guarantee/Indemnity

14.1 Warranty/Guarantee

14.1.1 Developer shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work.

14.1.2 In addition to guarantees and warranties required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of 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's governing board of the Work, subject to these General Conditions, or

14.1.2.2 The date that commissioning for the Project, if any, was completed.

14.1.3 If any work is not in compliance with the Drawings and Specifications, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a ONE (1) year period from date of completion as defined above, unless a longer period is provided for in the Contract Documents, without expense whatsoever to District.

14.1.4 In the event of failure of Developer and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Developer and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Developer and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

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

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

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

14.2 Indemnity

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

15. Time

15.1 Notice to Proceed with Construction

15.1.1 District may issue a Notice to Proceed with Construction ("NTP 2") within ninety (90) days from the date of the Notice of Award after Guaranteed Maximum Price. Once Developer has received the Notice to Proceed with Construction, Developer shall complete the Work within the period of time indicated in the Contract Documents.

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

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

15.2 Computation of Time / Adverse Weather

15.2.1 Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer in compliance with the time extension request procedures herein and only if all of the following conditions are met:

15.2.1.1 The weather conditions constitute Adverse Weather, as defined herein;

15.2.1.2 Developer can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

15.2.1.3 Developer's crew is dismissed as a result of the Adverse Weather;

15.2.1.4 Said delay adversely affect the critical path in the Construction Schedule; and

15.2.1.5 Exceeds twelve (12) days of delay per year.

15.2.2 If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.2.3 Developer shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

15.2.4 The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

15.3 Hours of Work

15.3.1 Sufficient Forces

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

15.3.2 Performance During Working Hours

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

15.3.3 No Work during State Testing

Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests. The District or District's Representative will provide Developer with a schedule of test dates concurrent with the District's issuance of the Notice to Proceed with Construction, or as soon as test dates are made available to the District.

15.4 Progress and Completion

15.4.1 Time of the Essence

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

15.4.2 No Commencement Without Insurance or Bonds

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

15.5 Schedule

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

15.6 Expeditious Completion

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

16. Extensions of Time – Liquidated Damages, Excusable Delays

16.1 Liquidated Damages

Developer and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed Developer shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay in Completion. Developer and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.2 Excusable Delay

16.2.1 Developer shall not be charged for liquidated damages because of any delays in completion of the Work which are not the fault of Developer or its Subcontractors, including without limitation 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 ("Notice of Delay"). If Developer fails to provide its written Notice of

Delay within this timeframe, Developer waives, releases, and discharges any right to assert or claim any entitlement to an adjustment to the Contract Price and/or the Contract Time based on circumstances giving rise to the asserted delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Developer has timely submitted the Construction Schedule as required herein.

16.2.2 Developer's Notice of Delay and request for a time extension pursuant to subparagraph 16.2 is a condition precedent to Developer's submittal of and/or entitlement to a claim pursuant to Article 25 of these Construction Provisions. Developer shall notify the District pursuant to the claims 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 Developer requests an extension of Contract Time for unavoidable delay as set forth in subparagraph 16.2.1, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work, including without limitation, the time requirements set forth in subsection 17.5, below. When requesting time, requests must be submitted with full justification and documentation. If Developer fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any request for a time extension must include the following information as support, without limitation:

16.2.3.1 The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

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

16.2.4 Developer must comply with requirements in subsection 16.2 for a Notice of Delay and supporting justification notwithstanding Developer contends the specific delay period is unknown and continuing. When submitting

a Notice of Delay and supporting justification, Developer must provide an estimated delay duration to critical path activities at the time the Notice of Delay and supporting justification is required to be submitted. If Developer contends the delaying event(s) are continuing, Developer must update monthly the estimated delay period with supporting justification.

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

16.3 No Additional Compensation for Delays within Developer's Control

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

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

16.3.2.1 The District is responsible for the delay;

16.3.2.2 The delay is unreasonable under the circumstances involved;

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

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

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

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

16.3.3.1 Actually incurred performing the Work;

16.3.3.2 Not compensated by the Markup allowed; and

16.3.3.3 Directly result from the extended Contract Time.

16.3.4 Contractor shall comply with all required procedures, documentation and time requirements in the Contract Documents. Contractor may not seek or recover such costs using formulas (e.g. Eichleay, labor factors).

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

17. Changes in the Work

17.1 No Changes without Prior Authorization

17.1.1 There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order or a written Construction Change Directive authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order or Construction Change Directive in advance of the changed Work being performed. No extension of time for performance of the Work shall be allowed hereunder unless a request for such extension is made at the time changes in the Work are ordered, and such time duly adjusted and approved in writing in the Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2 Developer shall perform immediately all work that has been authorized by a fully executed Change Order or Construction Change Directive. Developer shall be fully responsible for any and all delays and/or expenses caused by Developer's failure to expeditiously perform this Work.

17.1.3 Should any Change Order result in an increase in the Guaranteed Maximum Price or extend the Contract Time, the cost of or length of extension in that Change Order shall be agreed to, in writing, by the District in advance of the work by Developer. In the event that Developer proceeds with any change in Work without a Change Order executed by the District or Construction Change Directive, Developer waives any claim of additional compensation or time for that additional work. Under no circumstances shall Developer be entitled to any claim of additional compensation or time not expressly requested by Developer in a Proposed Change Order or approved by District in an executed Change Order.

17.1.4 A Change Order or Construction Change Directive will become effective when approved by the Board, notwithstanding that Developer has not signed it. A Change Order or Construction Change Directive will become

effective without Developer's signature provided District indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the Guaranteed Maximum Price or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

17.1.5 Developer understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.2 Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Maximum Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Construction Change Directive, or by Architect's response(s) to RFI(s), or by Architect's Supplemental Instructions ("ASI").

17.3 Change Orders

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

17.3.1.1 A description of a change in the Work.

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

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

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 critical path in the Construction Schedule as defined in the Contract Documents. Developer shall justify the proposed change in time by submittal of a schedule analysis that accurately shows the actual impact, if known, or the estimated impact if unknown, of the change on the critical path of the Construction Schedule ("Time Impact Analysis"). If Developer fails to request a time extension in a PCO, including the Time Impact Analysis, and/or fails to comply with these Construction Provisions including, without limitation, Articles 15, 16, or 17, then Developer is thereafter precluded from requesting, and waives any right to request, an adjustment to the Contract Time or Contract Price relating to the subject matter of the PCO. In no case shall Developer or any of its Subcontractors be permitted to reserve rights for additional time for Change Order Work. A PCO that leaves the amount of time requested blank, or states that such time requested is "to be determined," or otherwise not specifically identified, is not permitted and shall also constitute a waiver of any right to request additional time and/or claim a delay.

17.4.4 Unknown and/or Unforeseen Conditions

If there is an Allowance, then Developer must submit a Request for Allowance Expenditure Directive, including supporting documentation as described below, to receive authorization for the release of funds from the Allowance. Allowance Expenditure Directives shall be based on Developer's costs, without overhead and profit, for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental will be included in Allowance Expenditure Directive authorizing expenditure of funds from this Allowance. No overhead and profit shall be added to the Allowance Expenditure Directive. If cost of the unforeseen condition(s) exceed the Allowance, and Developer submits a PCO for amounts in excess of the Allowance 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 Developer shall complete the Project without any increase in Guaranteed Maximum Price and/or Contract Time based on that PCO.

17.4.5 Time to Submit Proposed Change Order

Developer shall submit its PCO within five (5) working days of the date Developer discovers, or reasonably should have discovered, the circumstances giving rise to the PCO, unless additional time to submit a PCO is granted in writing by the District. Time is of the essence in Developer's submission of PCOs so that the District can promptly investigate the basis for the PCO. Accordingly, if Developer fails to submit its PCO within this timeframe, Developer waives, releases, and discharges any right to assert or claim any

entitlement to an adjustment of the Guaranteed Maximum Price and/or Contract Time based on circumstances giving rise to the PCO.

17.4.6 Proposed Change Order Certification

In submitting a PCO, Developer certifies and affirms that the cost and/or time request is submitted in good faith, that the cost and/or time request is accurate and in accordance with the provisions of the Contract Documents, and Developer submits the cost and/or request for extension of time recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim under Government Code section 12650 et seq.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of Developer's costs and expenses, direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project including, without limitation, cumulative impacts. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.5 Format for Proposed Change Order

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

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

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

17.5.2 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 the actual cost, use of any formulas (e.g. labor factors) is not allowed, not to exceed prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, fully Burdened. Labor costs shall exclude costs incurred by the Developer in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent. If applicable, District will pay Developer the reasonable costs for room and board, supported with appropriate backup documentation, without markup for profit or overhead as provided by U.S. General Services Administration per diem rates for California lodging, meals and incidentals, https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup.

17.5.3 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 Developer, compensation therefor shall not exceed the current wholesale price

for such materials. If, in the reasonable opinion of the District, the costs asserted by Developer for materials in connection with any change in the Work are excessive, or if Developer fails to provide satisfactory evidence of the actual costs of such materials from its supplier or vendor of the same, the costs of such materials and the District's obligation to pay for the same shall be limited to the then lowest wholesale price at which similar materials are available in the quantities required to perform the change in the Work. The District may elect to furnish materials for the change in the Work, in which event Developer shall not be compensated for the costs of furnishing such materials or any mark-up thereon.

17.5.4 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 Developer from the Architect, the Project Inspector, the Construction Manager and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Developer shall not be entitled to an allowance or any other compensation for Equipment or tools used in the performance of a change in the Work where the Equipment or tools have a replacement value of $500.00 or less. Equipment costs claimed by Developer in connection with the performance of any Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector, Construction Manager and the District, the allowable rate for the use of Equipment in connection with the Work shall constitute full compensation to Developer for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Equipment operator), and any and all other costs incurred by Developer incidental to the use of the Equipment.

17.5.5 General Conditions Cost.

The phrase "General Conditions Cost" shall mean, other than expressly limited or excluded herein, the costs of Developer during the construction phase, including but not limited to: payroll costs for project manager for Work conducted at the Site, payroll costs for the superintendent and full-time general foremen, workers not included as direct labor costs engaged in support

functions (e.g., loading/unloading, clean-up), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of consultants not in the direct employ of Developer or Subcontractors, and fees for permits and licenses.

17.5.6 Overhead and Profit.

The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, and general conditions, field and home office expenses.

17.6 Change Order Certification

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

The undersigned Developer approves the foregoing as to the changes, if any, and to the Guaranteed Maximum Price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. and U.S. Criminal Code, 18 U.S.C. § 1001. It is understood that the changes herein to the Contract Documents shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project, including, without limitation, cumulative impacts. Developer is not entitled to separately recover amounts for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.6.2 Accord and Satisfaction: Developer's execution of any Change Order shall constitute a full accord and satisfaction, and release, of all Developer (and if applicable, Subcontractor) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim.

17.7 Determination of Change Order Cost

17.7.1 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:

17.7.1.1 District acceptance of a COR or PCO.

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

17.7.1.3 By agreement between District and Developer.

17.8 Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work less the value of any new work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. Unit Prices, if any, may be used in District's discretion in calculating reasonable value. If Developer offers a proposed amount for a deductive Change Order(s) for work performed, Developer shall include a credit for total profit and overhead less proof of expended costs related to the deleted work with the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a credit for total profit and overhead less proof of expended costs related to the deleted work with the Change Order(s). Any deviation from this provision shall not be allowed.

17.9 Addition or Deletion of Alternate Bid Item(s)

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

17.10 Discounts, Rebates, and Refunds

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

17.11 Construction Change Directives

17.11.1 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.

17.11.2 The District may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

17.12 Force Account Directives

17.12.1 When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by Developer for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

17.12.2 District will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the District.

17.12.3 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.

17.12.4 Developer shall be responsible for all costs related to the administration of Force Account Directives. The markup for overheard and profit for Developer modifications shall be full compensation to Developer to administer Force Account Directives, and Developer shall not be entitled to separately recover additional amounts for overhead and/or profit.

17.12.5 Developer shall notify the District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, Developer shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. Developer will not be compensated for force account work in the event that Developer fails to timely notify the District regarding the commencement of force account work, or exceeding the force account budget.

17.12.6 Developer shall diligently proceed with the work, and on a daily basis, submit a daily force account report using the Daily Force Account Report form no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The IOR or District representative will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to Developer for its records. The District will not sign, nor will Developer receive compensation

for, work the District cannot verify. Developer will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work

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

17.13 Price Request

17.13.1 Definition of Price Request

A Price Request is a written request prepared by the Architect or Construction Manager requesting 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.

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

17.14 Accounting Records

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

17.15 Notice Required

If Developer desires to make a claim for an increase in the Guaranteed Maximum Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein, including the Article on Claims 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.

17.16 Applicability to Subcontractors

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

17.17 Alteration to Change Order Language

Developer shall not alter Change Orders or reserve time in Change Orders. Change Orders altered in violation of this provision, if in conflict with the terms set forth herein, shall be construed in accordance with the terms set forth herein. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.18 Failure of Developer to Execute Change Order

Developer shall be in default of the Contract Documents if Developer fails to execute a Change Order when Developer agrees with the addition and/or deletion of the Work in that Change Order.

18. Requests for Information

18.1 Any Request for Information shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. Developer shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Maximum Price, Contract Time, or the Contract Documents.

18.2 Developer may be responsible for any costs incurred for professional services that District may deduct from any amounts owing to Developer, if a Request for Information requests an interpretation or decision of a matter where the information sought is equally available to the party making the request. District may deduct from and/or invoice Developer for professional services arising therefrom.

19. Payments

19.1 Guaranteed Maximum Price

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

19.2 Applications for Tenant Improvement Payments

19.2.1 Procedure for Applications for Tenant Improvement Payments

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

supported by the following or each portion thereof unless waived by the District in writing:

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

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

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

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

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

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

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

19.2.1.1.8 A total of the retentions held.

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

19.2.1.1.10 The percentage of completion of Developer's Work by line item.

19.2.1.1.11 Schedule of Values updated from the preceding Application for Payment.

19.2.1.1.12 A duly completed and executed conditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 8132 from Developer and each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment.

19.2.1.1.13 A duly completed and executed unconditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 8134 from Developer and each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment submitted 60 days prior; and

19.2.1.1.14 A certification by Developer of the following:

Developer warrants title to all Work performed as of the date of this payment application and that all such Work has been completed in accordance with the Contract Documents for the Project. Developer further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of Developer, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed. Submission of sums which have no basis in fact or which Developer knows are false are at the sole risk of Developer and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq.

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

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

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

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

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

19.2.2 Prerequisites for Tenant Improvement Payments

19.2.2.1 First Payment Request

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

19.2.2.1.1 Installation of the Project sign.

19.2.2.1.2 Installation of field office.

19.2.2.1.3 Installation of temporary facilities and fencing.

19.2.2.1.4 Schedule of Values.

19.2.2.1.5 Developer's Preliminary Construction Schedule for the first ninety (90) days.

19.2.2.1.6 Schedule of unit prices, if applicable.

19.2.2.1.7 Submittal Schedule.

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

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

19.2.2.1.10 All bonds and insurance endorsements; and

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

19.2.3 Subsequent Payment Requests

The District will not process subsequent payment requests until and unless submittals and Shop Drawings necessary to maintain the Project schedule have been submitted to the Architect.

19.2.4 No Waiver of Criteria

Any payments made to Developer where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Developer may pay its Subcontractors and suppliers. Developer agrees that failure to submit such items may constitute a breach of contract by Developer and may subject Developer to termination.

19.3 District's Approval of Application for Payment

19.3.1 Upon receipt of an Application for Payment, The District shall act in accordance with both of the following:

19.3.1.1 Each Application for Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

19.3.1.2 Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to

Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.2 An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the District.

19.3.3 District's review of the Developer's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.3.1 Observation of the Work for general conformance with the Contract Documents.

19.3.3.2 Results of subsequent tests and inspections.

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

19.3.3.4 Specific qualifications expressed by the Architect.

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

19.3.5 Payments to Developer

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

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

19.3.6 No Waiver

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

19.3.7 Warranty of Title

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

19.3.7.2 If Developer fails to furnish to the District within ten (10) calendar days after demand by the District satisfactory evidence that a lien or a claim based on a stop payment notice has been released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Developer under the Contract.

19.4 Decisions to Withhold Payment

19.4.1 Reasons to Withhold Payment

The District shall withhold payment in whole, or in part, as required by statute. In addition, the District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. Payment, in whole, or in part, will be withheld based on the need to protect the District from loss because of, but not limited to, any of the following:

19.4.1.1 Defective Work not remedied within FORTY-EIGHT (48) hours of written notice to Developer.

19.4.1.2 Stop Payment Notices or other liens served upon the District as a result of the Contract.

19.4.1.3 Failure to comply with the requirements of Public Contract Code section 2600 et seq. ("Skilled and Trained Workforce Requirements").

19.4.1.4 Liquidated damages assessed against Developer.

19.4.1.5 Reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Maximum Price or by the Contract Time.

19.4.1.6 Damage to the District or other contractor(s).

19.4.1.7 Unsatisfactory prosecution of the Work by Developer.

19.4.1.8 Failure to store and properly secure materials.

19.4.1.9 Failure of Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

19.4.1.10 Failure of Developer to maintain As-Built Drawings.

19.4.1.11 Erroneous estimates by Developer of the value of the Work performed, or other false statements in an Application for Payment.

19.4.1.12 Unauthorized deviations from the Contract Documents.

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

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

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

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

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

19.4.1.18 Failure to properly maintain or clean up the Site.

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

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

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

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

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

19.4.1.24 Developer is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

19.4.2 Reallocation of Withheld Amounts

19.4.2.1 After prior written notice to Developer with details regarding the District's proposed application of withheld amounts, District may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Developer. If any payment is so made by District, then that amount shall be considered a payment made under the Contract Documents by District to Developer and District shall not be liable to Developer for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Developer an accounting of funds disbursed on behalf of Developer.

19.4.2.2 If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after FORTY-EIGHT (48) hours' written notice to Developer and opportunity to commence and pursue cure of default, and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Maximum Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with the provisions of the Contract Documents, an equitable reduction in the Guaranteed Maximum Price (up to one hundred fifty percent (150%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.4.3 Payment After Cure

When Developer removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of Developer to perform in accordance with the terms and conditions of the Contract Documents.

19.5 Subcontractor Payments

19.5.1 Payments to Subcontractors

No later than seven (7) days after receipt of any Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, Developer shall pay to each Subcontractor, out of the amount paid to Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.5.2 No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

19.5.3 Joint Checks

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to Developer and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, or a material or equipment supplier, or any obligation from the District to such Subcontractor or a material or equipment supplier or rights in such Subcontractor against the District.

20. Completion of the Work

20.1 Completion

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

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

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

hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as reasonably determined by District, until the item(s) are completed.

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

20.2 Close-Out/Certification Procedures

20.2.1 Punch List

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

20.2.2 Close-Out/Certification Requirements

20.2.2.1 Utility Connections

Buildings shall be connected to water, gas, sewer, electric, phone, and internet services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.2.2 As-Builts/Record Drawings and Record Specifications

20.2.2.2.1 Developer shall provide exact "as-built" drawings of the Work upon completion of the Project as indicated in the Contract Documents, including but not limited to the Specifications ("As-Built Drawings") as a condition precedent to approval of final payment.

20.2.2.2.2 Developer is liable and responsible for any and all inaccuracies in the As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.2.2.3 Upon completion of the Work and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints and deliver the same to Architect in a form acceptable to the Architect as part of closeout.

20.2.2.3 Construction Storm Water Permit, if applicable

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

20.2.3 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 District acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

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

20.3.3 Final Inspection Requirements

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

20.3.3.1.1 The Work has been completed.

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

20.3.3.1.3 Mechanical and electrical Work, including, without limitation, security system, data, fire alarm, are complete and tested, fixtures are in place, connected, and ready for tryout.

20.3.3.1.4 Electrical circuits scheduled in panels and disconnect switches labeled.

20.3.3.1.5 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 Developer or Developer's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and Developer shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims 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, Developer, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

20.5.3 No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or District's acceptance of the Work not complying with the requirements of the Contract Documents.

21. Final Payment and Retention

21.1 Final Payment

Upon receipt of a final Application for Payment from Developer, the Architect will notify the District whether the Work is complete so that joint inspection of the Work can be scheduled. Thereafter, the District shall jointly inspect the Work and either accept the Work as complete or notify the Architect and Developer in writing of reasons why the Work is not complete. Upon District's acceptance of the Work of Developer as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and Developer shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

21.2 Prerequisites for Final Payment

The following conditions must be fulfilled prior to Final Payment:

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

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

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

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

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

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

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

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

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

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

21.3 Retention

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

21.3.1.1 After approval by the District of the Architect of the Application and Certificate of Payment.

21.3.1.2 After the satisfaction of the conditions set forth herein.

21.3.1.3 No less than forty-five (45) days after the recording of the Notice of Completion by District; and

21.3.1.4 After receipt of a duly completed and executed unconditional waiver and release upon Final Payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the Final Payment.

21.3.2 No interest shall be paid on any retention, or on any amounts withheld due to a failure of Developer to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and Developer pursuant to Public Contract Code section 22300.

21.4 Substitution of Securities

The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

22. Uncovering of Work

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be corrected, replaced and/or recovered at Developer's expense without change in the Guaranteed Maximum Price or Contract Time.

23. Nonconforming Work and Correction of Work

23.1 Nonconforming Work

23.1.1 Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

23.1.2 If Developer does not commence to remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed FORTY-EIGHT (48) hours after written notice and complete removal of work within a reasonable time, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

23.2 Correction of Work

23.2.1 Correction of Rejected Work

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

23.2.2 One-Year Warranty Corrections

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

23.3 District's Right to Perform Work

23.3.1 If Developer should neglect to prosecute the Work properly or fail to perform any provisions of the Contract Documents, the District, after providing

FORTY-EIGHT (48) hours' written notice and an opportunity to cure the failure, to Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due Developer.

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

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

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

23.3.2.3 That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

24. Termination and Suspension

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

25. Claims Process

25.1 Obligation to File Claims for Disputed Work

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

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

25.2 Duty to Perform during Claim Process

Developer and its subcontractors shall continue to perform its Work under the Contract, including the Disputed Work, and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

25.3 Definition of Claim

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

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

25.3.1.2 Payment by the District of money or damages arising from work done by, or on behalf of, Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Developer is not otherwise entitled to; or

25.3.1.3 An amount of payment disputed by the District.

25.4 Claims Presentation

25.4.1 Form and Contents of Claim

25.4.1.1 If Developer intends to submit a Claim for an increase in the Guaranteed Maximum Price and/or Contract Time for any reason including, without limitation, the acts of District or its agents, Developer shall, within thirty (30) days after the event giving rise to the Claim, give notice of the Claim ("Notice of Potential Claim") in writing, specifically identifying Developer is invoking this Article 25 Claims Presentation. The Notice of Potential Claim shall provide Developer's preliminary request for an adjustment to the Contract Price and/or Contract Time, with a description of the grounds therefore.

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

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

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

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

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

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

25.4.1.3 The Claim shall include the following certification by Developer:

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

25.4.1.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project including, without limitation, cumulative impacts. Any costs, expenses, damages, or time extensions not included are deemed waived.

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

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

25.5 Claim Resolution pursuant to Public Contract Code section 9204

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

25.5.1 STEP 1:

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

25.5.1.1.1 Any payment due on an undisputed portion of the Claim shall be processed and made within 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.

25.5.1.2 Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Developer must comply with the sections below regarding Public Contract Code section 20104 et seq. and Government Code Claim Act Claims.

25.5.1.3 If the District fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A claim that is denied by reason of the District's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of Developer.

25.5.2 STEP 2:

25.5.2.1 If Developer disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Developer may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 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 Developer a

written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed.

25.5.2.2 Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

25.5.3 STEP 3:

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

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

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

25.5.4 STEP 4:

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

25.6 Subcontractor Pass-Through Claims

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

requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

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

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

25.7 Government Code Claim Act Claim

25.7.1 If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements, including those pursuant to Public Contract Code section 9204, Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Developer's right to bring a civil action against the District.

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

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

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

25.8.1 In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between Developer and District by those procedures set forth in Public Contract Code section 20104 et seq., to the extent applicable.

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

25.8.1.2 For claims of less than fifty thousand dollars ($50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the claim or relating to defenses or claims the District may have against Developer.

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

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

25.8.1.3 For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against Developer.

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

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

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

25.8.1.5 Following the meet and confer conference, if the claim or any portion of it remains in dispute, Developer shall file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

25.8.1.6 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the

submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

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

25.8.1.8 The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

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

25.9 Claims Procedure Compliance

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

25.9.2 District shall not be deemed to waive any provision under this Article 25, if at District's sole discretion, a claim is administered in a manner not in accord with this Article 25. Waivers or modifications of this Article 25 may only be made by a signed change order approved as to form by legal counsel for both District and Developer; oral or implied modifications shall be ineffective.

25.10 Claim Resolution Non-Applicability

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

25.10.1.1 Personal injury, wrongful death or property damage claims.

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

25.10.1.3 Stop payment notices.

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

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

25.10.1.6 District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

25.11 Attorney's Fees

25.11.1 Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

26. State Labor, Wage & Hour, Apprentice, And Related Provisions

26.1 Labor Compliance and Enforcement

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Developer specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that Developer and all Subcontractors shall timely furnish complete and accurate electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

26.2 Wage Rates, Travel, and Subsistence

26.2.1 Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. 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 no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project and within ten (10) days of any request by the District or Labor Commissioner at http://www.dir.ca.gov/Public-Works/Certified/Payroll-Reporting.html or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Developer and/or each Subcontractor in connection with the Work.

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

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

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

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

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

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

26.4.2.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

26.4.3 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, Division of Labor Standards Enforcement, or DIR shall be 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.

26.4.4 Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days of a change in location of the records, provide a notice of change of location and address.

26.4.5 In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty, forfeit up to one hundred dollars ($100) to District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from Tenant Improvement Payments then due.

26.4.6 [Reserved]

26.5 [Reserved]

26.6 Apprentices

26.6.1 Developer acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

26.6.2 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

26.6.3 Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

26.6.4 Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

26.6.5 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Developer and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving Developer or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

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

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

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

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

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

26.6.7.4 Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

26.7 Skilled and Trained Workforce

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

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

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

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

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

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

26.7.1.3 "Skilled Journeyperson" means a worker who either:

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

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

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

26.7.2.1 Provide monthly reports to the District demonstrating that Developer and its subcontractors are complying with the requirements of Public Contract Code section 2600 et seq., which shall be a public record under California Public Records Act, Government Code section 6250 et seq.; or

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

every tier performing work on the Project to use a skilled and trained workforce.

26.8 [Reserved]

26.9 Non-Discrimination

26.9.1 Developer herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3 of Title 2 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

26.9.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

26.10 Labor First Aid

Developer shall maintain emergency first aid treatment for Developer's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

27. [Reserved]

28. Miscellaneous

28.1 Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

28.1.1 Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

28.1.2 Section 4552 of the Government Code states in pertinent part:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

28.1.3 Section 4553 of the Government Code states in pertinent part:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

28.1.4 Section 4554 of the Government Code states in pertinent part:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

28.1.5 Under this Article, "public purchasing body" is District and "bidder" is Developer.

28.2 Excise Taxes

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Maximum Price.

28.3 Taxes

Guaranteed Maximum Price is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 et seq. of the Revenue and Taxation Code, Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

28.4 Shipments

Developer is responsible for any or all damage or loss to shipments until delivered and accepted on Site, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Maximum Price shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

28.5 Compliance with Government Reporting Requirements

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project of which it is part, or for any other reason, Developer shall comply with those reporting requirements at the request of the District at no additional cost.

[END OF DOCUMENT]

EXHIBIT D-1

SPECIAL CONDITIONS

Attached are the special terms and conditions for the Project.

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EXHIBIT D-1

SPECIAL CONDITIONS

1. Reserved

2. Permits, Certificates, Licenses, Fees, Approvals

2.1. Payment for Permits, Certificates, Licenses, Fees, Approvals.

As required in the General Construction Provisions, Developer shall secure and pay for all permits, licenses and certificates necessary for the prosecution of the Work with the exception of the following:

DSA inspector fees, special inspections, and IOR fees.

With respect to the above listed items, District will be responsible for payment of these charges or fees, but only for the actual and direct costs (without markup or additional fees). Developer shall notify the District of the amount due with respect to these items and to whom the amount is payable. Developer shall provide the District with an invoice and receipt with respect to such charges or fees. In the alternative, District may pay such costs directly.

3. Disabled Veterans Business Enterprise

This Project uses or may plan to use funds allocated pursuant to the State of California School Facility Program for the construction and/or modernization of school buildings. Education Code Section 17076.11 requires the District to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the District on projects that receive state funding. Accordingly, Developer must submit the Disabled Veteran Business Enterprise Participation Certification to the District after issuance of the Notice of Award After Guaranteed Maximum Price, identifying the steps Developer took to solicit DVBE participation in conjunction with this Contract.

4. Modernization Projects

4.1. Access.

Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Developer's Work, the overtime wages for the custodian will be paid by Developer, unless at the discretion of the District, other arrangements are made in advance.

4.2. Master Key.

Upon request, the District may, at its own discretion, provide a master key to the school site for the convenience of Developer. 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.

4.3. Maintaining Services.

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.

4.4. Maintaining Utilities.

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.

4.5. Confidentiality.

Developer shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Developer encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

4.6. Work during Instructional Time.

Developer affirms that Work may be performed during ongoing instruction in existing facilities. If so, Developer agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

4.7. No Work during Student Testing.

Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests.

5. Substitution for Specified Items

5.1.1. 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.

5.1.2. 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.

5.1.3. 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.

5.2. A request for a substitution shall be submitted as follows:

5.2.1. Developer shall notify the District in writing of any request for a substitution at least ten (10) days prior to proposal opening as indicated in the Request for Qualifications and Proposals.

5.2.2. 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.

5.3. Within 35 days after the date of the Notice to Proceed with Construction, Developer shall provide data substantiating a request for substitution of "an equal" item, including but not limited to the following:

5.3.1. 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;

5.3.2. Available maintenance, repair or replacement services;

5.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

5.3.4. 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

5.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

5.4. 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:

5.4.1. 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;

5.4.2. The Developer provides the same warranties and guarantees for the substitute that would be provided for that specified;

5.4.3. 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;

5.4.4. The Developer shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

5.4.5. 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.

5.5. 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.

5.6. 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.

5.7. 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.

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APPENDIX A

DISTRICT MMRP

[RESERVED]

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20__, and is made by and between _____ ("Developer"), as Lessor, and the Fremont Union High School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 20__, (the "Lease") for the leasing by Developer to District of the completed Project in Sunnyvale, 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: _____ __ , 20__	Dated: _____ __ , 20__
Fremont Union High School District	[Developer]
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.

[EXHIBIT F TO BE COMPLETED AT A LATER DATE]

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.

[EXHIBIT G TO BE COMPLETED AT A LATER DATE]

EXHIBIT H

PROJECT STABILIZATION AGREEMENT

Attached is the Project Stabilization Agreement applicable to this Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBIT FOLLOWS]

FREMONT UNION HIGH SCHOOL DISTRICT
PROJECT STABILIZATION AND ARCHITECTURE, ENGINEERING AND CONSTRUCTION CAREERS AGREEMENT

INTRODUCTION/FINDINGS

This Agreement is entered into this ____ day of _____, 20___, by and between the Fremont Union High School District (hereinafter the "District"), together with contractors and subcontractors of all tiers, who shall become signatory to this Agreement by signing the **"Agreement to be Bound" (Addendum A)** (referred to collectively herein as "Contractor(s)/Employer(s)"), and the Santa Clara and San Benito Counties Building and Construction Trades Council (hereinafter the "Council") and its affiliated local Unions that have executed this Agreement (referred to collectively herein as "Union" or "Unions").

The purpose of this Agreement is to promote the efficiency of construction operations for the District through the use of skilled labor resulting in quality construction outcomes of District projects covered by the Agreement, to promote career opportunities and job placement for District students, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the District's and the public interest in assuring the timely and economical completion of the Project.

WHEREAS, the timely and successful completion of the Project is of the utmost importance to meet the needs of the District and avoid increased costs resulting from delays in construction; and

WHEREAS, utilization of this Agreement is intended to enhance compliance with prevailing wage requirements;

WHEREAS, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and has identified the need and desire to prepare its students for lifelong careers and continuing education, and recognizes the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry;

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work and will be represented by the Unions signatory to this Agreement and employed by contractors and subcontractors who are also signatory to this Agreement; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, it is important to the successful completion of the Project that a sufficient supply of skilled craft workers be available;

WHEREAS, the interests of the District, its students, the Unions, and the Contractors/Employers would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if Union and non-union workers of different employers were to work side by side on the Project, potentially leading to labor disputes that could delay completion of the Project; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project, insofar as a legally binding agreement exists between the Contractors/Employers and the affected Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on the Project will be awarded in accordance with the applicable provisions of the California State Public Contract Code and all state, local and federal laws; and

WHEREAS, the District has the absolute right to select the responsible bidder submitting the lowest responsive bid for the award of each construction contract for the Projects, or to reject all bid proposals, or to use other legal project delivery methodologies.

WHEREAS, the District recognizes the success of the prior Project Stabilization and Architecture, Engineering and Construction Careers Agreements in reaching these goals; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

1.1 "Agreement" means this Project Stabilization Agreement.

1.2 "Agreement to be Bound" means the agreement (attached hereto and incorporated herein as **Addendum A**) that shall be executed by each and every Contractor/Employer as a condition of working on the Project.

1.3 "CCP" means the Architecture, Engineering and Construction Careers Program, attached hereto as **Addendum C**.

1.4 "Completion" means that point at which there is Final Acceptance by the District of a Construction Contract and the District has filed a Notice of Completion. For the purposes of this definition, "Final Acceptance" means that point in time at which the District has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the District has executed a written acceptance of the work.

1.5 "Construction Contract" means the public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of the Project is done) awarded by the District that are necessary to complete the Project.

1.6 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the District with respect to the construction of any part of the Project, under contract terms and conditions that are approved by the District and that incorporate this Agreement, and all contractors and subcontractors of any tier.

1.7 "Council" means the Santa Clara and San Benito Counties Building and Construction Trades Council.

1.8 "District" means the Fremont Union High School District, its governing board, officers, agents and public employees, including managerial personnel.

1.9 "District's Authorized Representative" is the individual named in the Notice to Bidders or Request for Proposals, whose authority includes, but is not limited to, the authority to approve Addenda, Change Orders, Payment Requests, Milestone and Project Completion date(s).

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.11 "Project" means the projects listed in **Addendum B** attached hereto.

1.12 "Project Manager" means the person(s) or entity(ies) designated by the District to

oversee all phases of construction on the Project and the implementation of this Agreement, and that works under the guidance of the District's authorized representative.

1.13 "Union" or "Unions" means the Santa Clara and San Benito Counties Building and Construction Trades Council, and its affiliated local Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II
SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing Construction Contracts on the Project (including subcontractors at any tier), and their successors and assigns, the District, the Council and the Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on the Project. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.4, except when the District directs a Contractor to engage in repairs, warranty work, modifications or punch list work as necessary under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting, or repair of buildings, structures and other works, and related activities for the Project, that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, modular furniture installation and final clean-up. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for the Project performed after Completion and which is covered by a Schedule A, unless performed by District employees.

2.3.2 This Agreement covers all on-site fabrication work over which the District, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is traditionally performed by any of the Unions that is directly or indirectly part of the Project, provided such work is covered by a Master Agreement or local addenda to a national agreement of the applicable Union(s).

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud shall be covered by the terms and conditions of this Agreement to the fullest extent provided by law. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of written request or as required by bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Agreement of Elevator Constructors, the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement:

2.4.1 This Agreement is not intended to, and shall not, affect or govern the award of public works contracts by the District that are not included in the Project.

2.4.2 This Agreement shall not apply to a Contractor/Employer's non-construction craft executives, managerial employees, supervisors above the level of general foreman (except those covered by existing Master Agreements), and administrative and management personnel.

2.4.3 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors, or by public or private utilities.

2.4.4 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.4.5 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code.

2.4.6 In limited circumstances requiring special knowledge of the particular item(s), the installation of specialty process equipment or systems may be performed by employees of a manufacturer, or by designated representatives of the manufacturer, if necessary to maintain the manufacturer's warranty or guarantee, provided, however, that the manufacturer can demonstrate by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement. All such work shall be identified and discussed at the Pre-Construction Conference as provided in Article V of this Agreement.

2.5 Award of Contracts: It is understood and agreed that the District has the right to select any qualified bidder for the award of Construction Contracts under this Agreement. The

bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement. A copy of all invitations to bid shall be provided at time of issuance to the Council.

2.6 It is understood by the parties that the District may, at any time, and at its sole discretion, combine, consolidate or modify and/or not build any one or more of the particular Projects covered by this Agreement and, with mutual agreement of the negotiating parties to this Agreement, determine to build additional projects under this Agreement not currently covered by this Agreement. In addition, the District may, at any time, at its sole discretion, terminate, delay and/or suspend any or all portions of work covered by this Agreement. However, should the District remove any work, contract, or Project and thereafter authorize that work, contract, or Project to be commenced, then such work, contract, or Project shall be performed under the terms of this Agreement.

2.7 This Agreement shall apply only to work performed with respect to the Project and shall have no application to any other construction work awarded by the District that is not part of the Project, or that takes place prior to the effective date of this Agreement as set forth in Section 18.2.

2.8 Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any non-Project operation, work, or function which may occur at the Project site or be associated with the development of the Project. Completion of the work under a Construction Contract for the Project shall be deemed complete upon the filing of a Notice of Completion by the District. Upon the filing of a Notice of Completion, the work is no longer covered by this Agreement except when the Contractor engages in repairs, warranty work or modifications as required by its Construction Contract with the District.

ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing this Agreement, the Unions and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for the Project, whether as a Contractor or subcontractor thereunder, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A.**

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing by executing the **Agreement to be Bound** to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor

may not be evaded by subcontracting. If the subcontractor refuses to execute the **Agreement to be Bound,** then such subcontractor shall not be awarded a construction subcontract to perform work on the Project.

3.4 This Agreement shall only be binding on the signatory parties hereto and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Schedule A. Any dispute between the Union(s) and the Contractor(s)/Employer(s) respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s)/Employer(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule A's incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement is inconsistent with a Schedule A, the provisions of this Agreement shall prevail. Where a provision of a Schedule A is not inconsistent with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV
WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1. The Unions, District, and Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the District because of a dispute on the Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on the Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the

Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on the Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the District and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business days' notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer's or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer that has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the District contends that any Union has violated this Article, it will so notify, in writing, the Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or William Riker, as the alternate arbitrator under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then the parties shall select the arbitrator from the list in Section 13.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the District and the party alleged to be in violation, and to the Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the District will contact the permanent arbitrator named above, or his alternate, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars ($10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 Such award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the District and the Council shall mutually agree to a replacement.

ARTICLE V
PRE-CONSTRUCTION CONFERENCE

5.1 Timing: The Project Manager shall convene and shall conduct together with the Council, a pre-construction conference at the Council at a mutually agreeable time, with the Unions and with representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and the other issues set forth below, at least twenty-one (21) calendar days prior to:

(a) The commencement of any Project work, and

(b) The commencement of Project work on each subsequently awarded Construction Contract.

5.2 The pre-construction conference shall be attended by a representative of each participating Contractor and each affected Union, and the Council and District may attend at their discretion.

5.3 The pre-construction conference shall include but not be limited to the following subjects:

(a) A listing of each Contractor's scope of work;

(b) The craft assignments;

(c) The estimated number of craft workers required to perform the work;

(d) Transportation arrangements;

(e) The estimated start and completion dates of the work; and

(f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the District, the Unions and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Council, or designated representatives thereof, shall meet as a JAC on a periodic basis during the term of construction. The District and the Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

ARTICLE VI
NO DISCRIMINATION

6.1 The Contractors/Employers and the Unions agree to comply with all nondiscrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII
UNION SECURITY

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 No employee covered by this Agreement is required to become a member of any Union as a condition of being employed on the Project. However, all employees who are employed by Contractors/Employers to work on the Project will be responsible for payment of the applicable monthly working dues and any associated fees required for union membership in the local Union that is a signatory to this Agreement, and shall, on or before the eighth (8) day of consecutive or cumulative employment on the Project, tender such dues and fees. This section shall be satisfied by the tendering of periodic dues and fees uniformly required to the applicable

Union and remaining current for the duration of work on the Project. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local Union.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII
REFERRAL

8.1 Union Referral System: The Unions shall be the primary source of all craft labor employed on the Project(s). Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the Signatory Unions when such procedures are not in violation of applicable law. The Contractors shall have the right to determine the competency of all employees and may reject any referral for any reason provided that the Contractor complies with Article VI [No Discrimination] and in accordance with the applicable Schedule A.

8.2 Key Work Force: Each Contractor may utilize his/her own key workforce subject to these conditions.

8.2.1 An employee shall be considered a member of a Contractor's "Key Workforce" employees if the employee's name appears on the Contractor's active payroll for at least ninety (90) of the one hundred twenty (120) working days preceding the date of the award of a contract for the Project. At the request of a Signatory Union, a Contractor employing "key workforce" employees shall demonstrate to the satisfaction of the Project Manager (or District Authorized Representative) that such employees are properly classified as members of its key workforce. Copies of cancelled paychecks, certified payrolls, or official information submitted for withholding tax purposes, covering the relevant dates, shall be presumptive evidence of proper key workforce designation. Key workforce employees shall be referred through the appropriate hiring hall on a call-by-name basis for the purpose of expediting the completion of all necessary dispatch and trust fund forms prior to starting work on the Project.

8.2.2 A Contractor may request by name, and the local will honor, referral of key workforce employees who have applied to the local Union for Project work and who demonstrate to the local union dispatcher and provide satisfactory proof of all of the following qualifications:

a. possess each license(s) required by state or federal law for the Project work to be performed;
b. have worked a total of at least three thousand (3,000) hours in the appropriate construction craft;
c. were on the Contractor's active payroll for at least ninety (90) out of the one hundred twenty (120) working days prior to the contract award; and
d. have the ability to perform safely the basic functions of the applicable trade.

8.2.3 The Unions will refer to such Contractor one employee from the hiring hall out of work list for each affected craft and will then refer one of the Contractor's key workforce employees. The alternating referral process then will be repeated, until a maximum of five (5) key workforce employees have been hired, after which point hiring will be done in accordance with Section 8.1 above. Employees shall be laid off in the same one-for-one manner in inverse order of their hiring.

8.3 A Contractor shall have the unqualified right to select and hire directly all supervisors above the level of general foreman (unless covered by a Schedule A) it considers necessary and desirable, without those persons being referred by the Union(s).

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain workers from any source. A Contractor/Employer who hires any worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement

8.5 Construction Careers Program: In order to increase pathways to construction job opportunities for District students and graduates, the parties shall comply with the Architecture, Engineering and Construction Careers Program attached hereto as **Addendum C**.

ARTICLE IX
WAGES AND BENEFITS

9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the Master Agreement(s) of the appropriate local Union(s).

9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if made by the Contractors/Employers. The Contractors/Employers agree to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this

Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

ARTICLE X
APPRENTICES

10.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in the respective crafts to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

10.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determinations.

10.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft, provided they are properly supervised.

ARTICLE XI
HELMETS TO HARDHATS

11.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

11.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XII
COMPLIANCE

12.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors/Employers on the Project. The District

shall monitor and enforce compliance with the prevailing wage requirements of the state and the Contractors/Employers' compliance with this Agreement.

12.2 Skilled and Trained Workforce Requirements: Contractor/Employers understand that with regard to both lease-leaseback projects (Education Code section 17406, et. seq.) and design-build projects (Education Code section 17250.10, et. seq.) they are required to comply with the skilled and trained workforce requirements set forth in Public Contract Code section 2601.

ARTICLE XIII
GRIEVANCE ARBITRATION PROCEDURE

13.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV (Work Stoppages, Strikes, Sympathy Strikes and Lockouts) and Article XIV (Work Assignments and Jurisdictional Disputes), shall be subject to resolution by the grievance arbitration procedures set forth below.

13.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or discharged without just cause.

13.3 No grievance shall be recognized unless the grieving party (Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than twenty (20) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

13.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, within five (5) business days of the Step 2 meeting, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall notify the permanent arbitrator identified in Article IV, or if he is not available, his alternate, for final and binding arbitration. The parties agree that if the permanent arbitrator or his alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second

1. Barry Winograd
2. Morris Davis
3. Carol Vendrillo

13.5 The decision of the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

13.6 The time limits specified at any step of the Grievance Procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

13.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

13.8 Retention: At the time a grievance is submitted under this Agreement or any Master Agreement, the Union may request that the District withhold and retain an amount from what is due and owing to the Contractor against whom the grievance is filed, sufficient to cover the damages alleged in the grievance, should the Union(s) prevail. The amount shall be retained by the District until such time as the underlying grievance giving rise to the retention is withdrawn, settled, or otherwise resolved, and the retained amount shall be paid to whomever the parties to the grievance shall decide, or to whomever an Arbitrator shall so order.

13.9 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the District and the Council shall mutually agree to a replacement.

ARTICLE XIV
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The District and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XV
MANAGEMENT RIGHTS

15.1 Consistent with the Schedule A agreements, the Contractors/Employers shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVI
DRUG AND ALCOHOL TESTING

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies contained in the applicable Schedule A.

ARTICLE XVII
SAVINGS CLAUSE

17.1 It is not the intent of the parties to this Agreement to violate any law. The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

17.2 The parties agree that in the event a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XVIII
TERM

18.1 This Agreement shall be included in the bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for the Project.

18.2 This Agreement shall become effective on the day it is executed by the District and by the Council.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

19.1 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed PDF signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

19.2 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.3 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the

terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

19.4 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____ Date: 2/13/19
Polly Bove, Superintendent

SANTA CLARA AND SAN BENITO COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL

By: _____ Date: 2/13/19
David Bini, Executive Director

UNION SIGNATURES

ASBESTOS WORKERS LOCAL 16

BOILERMAKERS LOCAL UNION 549

BAC LOCAL UNION 3

IBEW LOCAL 332

ELEVATOR CONSTRUCTORS LOCAL UNION 8

I.U.P.A.T. DISTRICT COUNCIL 16

IRON WORKERS LOCAL 377

LABORERS LOCAL UNION 270

OPERATING ENGINEERS LOCAL 3

OPERATIVE PLASTERERS AND CEMENT MASONS LOCAL UNION 400

PLASTERERS LOCAL UNION 300

ROOFERS LOCAL UNION 95

UNITED ASOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 355

UNITED ASSOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 393

UNITED ASSOCIATION, SPRINKLER FITTERS LOCAL UNION 483

SHEET METAL WORKERS INTERNATIONAL UNION LOCAL 104

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BAC LOCAL UNION 3	IBEW LOCAL 332
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PLASTERERS LOCAL UNION 300	ROOFERS LOCAL UNION 95
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PLASTERERS LOCAL UNION 300	ROOFERS LOCAL UNION 95
UNITED ASOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 355	UNITED ASSOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 393
UNITED ASSOCIATION, SPRINKLER FITTERS LOCAL UNION 483	SHEET METAL WORKERS INTERNATIONAL UNION LOCAL 104

UNION SIGNATURES

ASBESTOS WORKERS LOCAL 16

BOILERMAKERS LOCAL UNION 549

BAC LOCAL UNION 3

IBEW LOCAL 332

ELEVATOR CONSTRUCTORS LOCAL UNION 8

I.U.P.A.T. DISTRICT COUNCIL 16

IRON WORKERS LOCAL 377

LABORERS LOCAL UNION 270

OPERATING ENGINEERS LOCAL 3

OPERATIVE PLASTERERS AND CEMENT MASONS LOCAL UNION 400

PLASTERERS LOCAL UNION 300

ROOFERS LOCAL UNION 95

UNITED ASOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 355

UNITED ASSOCIATION, PLUMBERS & PIPEFITTERS LOCAL UNION 393

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UNITED ASSOCIATION, SPRINKLER FITTERS LOCAL UNION 483	SHEET METAL WORKERS INTERNATIONAL UNION LOCAL 104

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SIGN, DISPLAY AND ALLIED CRAFTS LOCAL UNION 510

NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL, FOR ITSELF AND ITS AFFILIATES

LABORERS LOCAL UNION 67

TEAMSTERS LOCAL UNION 287

SIGN, DISPLAY AND ALLIED CRAFTS LOCAL UNION 510

NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL, FOR ITSELF AND ITS AFFILIATES

LABORERS LOCAL UNION 67

TEAMSTERS LOCAL UNION 287

SIGN, DISPLAY AND ALLIED CRAFTS LOCAL UNION 510

NORTHERN CALIFORNIA CARPENTERS REGIONAL COUNCIL, FOR ITSELF AND ITS AFFILIATES



LABORERS LOCAL UNION 67

TEAMSTERS LOCAL UNION 287

Addendum A
AGREEMENT TO BE BOUND

[Date]
[Addressee]
[Address]

Re: Project Stabilization and Architecture, Engineering and Construction Careers Agreement for the Fremont Union High School District -- Agreement To Be Bound

Dear Mr./Ms. _____:

The undersigned confirms that it agrees to be a party to and bound by the Project Stabilization and Architecture, Engineering and Construction Careers Agreement for the Fremont Union High School District, as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this **Agreement to be Bound**, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate Subscription Agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by this Agreement shall extend to all work covered by the Fremont Union High School District Project Stabilization and Architecture, Engineering and Construction Careers Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR:_____

California Contractor State License No. or Motor Carrier (CA) Permit No.: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Authorized Person:_____

Address of Authorized Person:_____

State Public Works Registration Number: _____

ADDENDUM B
FREMONT UNION HIGH SCHOOL DISTRICT
MEASURE CC - PROPOSED FUTURE BOND PROGRAM

CUPERTINO HIGH SCHOOL	
Replace Baseball Field Grass to Synthetic Turf (2)	$ 4,926,250
VAPA Court Yard Project/Music Wing Modernization	$ 5,207,750
Choir Room Expansion	$ 2,252,000
Replace Main Canopy Roof System	$ 4,222,500
Cupertino Staff Lounge (1500)	$ 2,111,250
Cupertino Science Building Roof Replacement	$ 2,111,250
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech) - 5 wings	$ 19,986,500
Utility Infrastructure	$ 2,815,000
FREMONT HIGH SCHOOL	
New Field House & Boys/Girls Locker Room (14,800)	$ 12,232,200
Wrestling Room (5000)	$ 5,165,625
New Maintenance Yard	$ 1,033,125
Replace Softball Field Grass to Synthetic Turf	$ 2,252,000
Modernize Gym Offices/Lockers	$ 4,222,500
Modernize Student Center (4000)	$ 3,518,750
Seismic Upgrades (Art Building 11,639)	$ 4,914,568
Robotics Makers Space (3500)	$ 3,941,000
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech) - 4 wings	$ 9,596,335
Utility Infrastructure	$ 3,518,750
HOMESTEAD HIGH SCHOOL	
Gym Lobby Modernization	$ 3,518,750
Library and Library Quad Modernization (2000)	$ 5,207,750
Seismic Upgrades	$ 21,112,500
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech) - 6 wings	$ 24,321,600
LYNBROOK HIGH SCHOOL	
Replace Baseball and Softball Grass to Synthetic	$ 8,022,750
Engineering Robotics Hub	$ 11,260,000
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech) - 7 wings	$ 16,811,180
Utility Infrastructure	$ 4,222,500
MONTA VISTA HIGH SCHOOL	
Academic Quad Modernization	$ 2,111,250
Classroom Modernization (HVAC, Lighting, Flooring, Roof, Tech) - 5 wings	$ 28,033,178
Utility Infrastructure	$ 4,222,500
Maintenance Yard Modernization	$ 5,630,000
ACE Modernization/Future Facility	$ 16,890,000

Addendum C

ARCHITECTURE, ENGINEERING AND CONSTRUCTION CAREERS PROGRAM

Fremont Union High School District Architecture, Engineering and Construction Careers Pathway. The purpose of this partnership is to support development and implementation of a program that provides students opportunities to prepare for careers in engineering, architecture, construction management and construction trades. The intent of the program is to serve students who plan to enter college and university professional preparation programs as well as those who are preparing for employment and apprenticeships in the trades soon after graduation from high school. The partnership will provide expertise and resources to support development and implementation of the necessary Career-Tech courses, and to revise curriculum content in math, science and other areas to support a continuous pathway for students. The partnership will provide District teachers and curriculum developers access to summer internships and to professionals and trade leaders who can serve as advisors to the development of curriculum that is both engaging and relevant to students, and continues to maintain the high academic standards of the Fremont Union High School District.

Industry Steering Committee. In order to facilitate the goals of this partnership, the District agrees to become a member of the Santa Clara County Construction Careers Association (S4CA). There shall be no fees associated with membership to S4CA. S4CA will provide technical assistance and job placement and tracking services on behalf of the District for students who enter and graduate from the Architecture, Engineering and Construction Careers Program/Class and will act as the Industry Steering Committee. The purpose of the Industry Steering Committee will be to assist and aid in the Program/Class developed and delivered by the District.

Additionally S4CA and the Council will actively work to identify sources for educational and financial support including state and federal funding for the program.

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FREMONT UNION HIGH SCHOOL DISTRICT
PROJECT STABLIZATION AGREEMENT
AMENDMENT NO. 1

This Amendment is entered into by and between the Fremont Union High School District ("District") and the Santa Clara and San Benito Counties Building and Construction Trades Council ("Council"), as of the execution date of this Amendment ("Effective Date").

WHEREAS, the District and the Council, and the Council's affiliated and signatory local Unions ("Unions"), entered into the Project Stabilization Agreement for Fremont Union High School District on February 13, 2019 ("Agreement");

WHEREAS, the Agreement has promoted the efficiency of construction operations for the District and promoted the public interest in timely and economical completion of public works projects constructed pursuant to the Agreement;

WHEREAS, the Agreement covered projects funded by Measure CC — the Proposed Future Bond Program ("Bond Program") — which were identified in "Addendum B" to the Agreement;

WHEREAS, due to cost escalation and changing priorities, the District has restructured the Bond Program, and the parties now wish to replace Addendum B to update the projects covered by the Bond Program and the Agreement;

NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. Addendum B of the Agreement is hereby replaced, in its entirety, with the following:

ADDENDUM B
FREMONT UNION HIGH SCHOOL DISTRICT
MEASURE CC BOND PROGRAM BUDGET

CUPERTINO HIGH SCHOOL	
Replace Baseball Field Grass to Synthetic Turf (2)	$7,141,400
Classroom Modernization Bldg 100	$5,082,000
Classroom Modernization Bldg 300	$5,082,000
Classroom Modernization Bldg 400	$5,082,000
Classroom Modernization Bldg 500/Science Room	$6,029,250
Replace Main Canopy Roof System	$2,715,000

FREMONT HIGH SCHOOL	
Athletic Field Improvement	$2,105,640
Classroom Modernization Bldg 70	$2,178,000
Classroom Modernization Bldg 80	$2,904,000
FHS Original Building Modernization	$13,575,000
New Field House, Wresting Room & Locker Rooms	$13,419,432

HOMESTEAD HIGH SCHOOL	
Classroom Modernization Bldg A & Seismic Upgrades	$4,356,000
Classroom Modernization Bldg B & Seismic Upgrades	$19,075,000
Classroom Modernization Bldg C	$8,349,000
Classroom Modernization Bldg L	$5,082,000
Classroom Modernization Bldg S	$3,267,000
Seismic Upgrades	$11,120,000

LYNBROOK HIGH SCHOOL	
Athletic Field Improvement	$7,249,103
Auditorium Lobby & Promenade Modernization	$15,150,000
Classroom Modernization 100	$5,082,000
Classroom Modernization 200	$5,082,000
Classroom Modernization 300	$5,082,000
Classroom Modernization 400	$3,630,000
Classroom Modernization 500	$4,356,000
Classroom Modernization 600	$4,356,000
New Science Building	$20,145,000

MONTA VISTA HIGH SCHOOL	
Classroom Modernization Bldg A, B & C 2nd Floor	$13,794,000
Classroom Modernization Bldg D	$7,986,000
Classroom Modernization Bldg F	$6,171,000
Utility Infrastructure	$1,781,000

District Site	
Adult Ed/DO Campus	$24,290,000
Maintenance Yard Modernization	$5,430,000

2. All other provisions of the Agreement shall remain in full force and effect.

[signatures to follow]

WITNESS THE EXECUTION HEREOF on the day and year written below:

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____ Date: 4/1/2021

Polly Bove, Superintendent

SANTA CLARA AND SAN BENITO COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL

By: _____ Date: March 16th 2021

David Bini, Executive Director

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FREMONT UNION HIGH SCHOOL DISTRICT
PROJECT STABILIZATION AGREEMENT
AMENDMENT NO. 2

This Amendment is entered into by and between the Fremont Union High School District ("District") and the Santa Clara and San Benito Counties Building and Construction Trades Council ("Council"), as of the execution date of this Amendment.

Whereas, a Project Stabilization Agreement ("Agreement") was entered into on February 13, 2019, by and between the District, the Council, and the Council's affiliated and signatory local Unions ("Unions"); and

Whereas, the Agreement has promoted the efficiency of construction operations for the District and promoted the public interest in timely and economical completion of public works projects constructed pursuant to the Agreement; and

Whereas, the Agreement covered projects funded by Measure CC, which were identified in "**Addendum B**" to the Agreement; and

Whereas, the Agreement was amended by Amendment No. 1, which became effective on March 16, 2021, and modified **Addendum B** to update the projects covered by the Agreement; and

Whereas, the District has continued to experience positive benefits from the Agreement and from an ongoing relationship with the Council and its affiliated local Unions; and

Whereas, the residents of the District area voted in favor of a new bond called Measure G that will continue to fund the renovation and modernization of District facilities; and

Whereas, the parties to the Agreement now mutually desire to amend the Agreement and Amendment No. 1 to apply the Agreement to Measure G bond-funded projects; and

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN AND AMONG THE PARTIES TO AMEND THE AGREEMENT AS FOLLOWS:

1) **Addendum B** of the Agreement is hereby replaced, in its entirety, as follows:

ADDENDUM B
FREMONT UNION HIGH SCHOOL DISTRICT
MEASURES CC AND G BOND PROGRAM

CUPERTINO HIGH SCHOOL
Classroom Modernization Bldg 200 and Wellness Center
Classroom Modernization Bldg 700
New Performing Arts Building
Wings 911-916 & Learning Center Modernization
Utility Infrastructure Improvements

FREMONT HIGH SCHOOL
New Field House, Wresting Room & Locker Rooms and Athletic Complex
Classroom Modernization Science Building
New Art Building
Building 150 and Shop Modernization
Library Modernization
Music Building Modernization

HOMESTEAD HIGH SCHOOL
Classroom Modernization Bldg S
Library Quad Improvements
C and L New Building
Student Drop Off Improvements
Library Modernization

LYNBROOK HIGH SCHOOL
Building 100 Classroom Modernization
Building 200 Classroom Modernization
Classroom Modernization 300
Classroom Modernization 400
Classroom Modernization 500
Building 600 Classroom Modernization
New Voyager Building
Classroom Modernization 000
New Makerspace Building

MONTA VISTA HIGH SCHOOL
Classroom Modernization Bldg F
Library Modernization and Wellness Center
Theater and Music Building Modernization
Building F2 Classroom Modernization (Black Box)

DISTRICT WIDE
Adult Ed/DO Campus
Adult Ed Classroom Conversion
Solar and Parking Lot Improvements
New Robotics Center

2) Other than as explicitly set forth herein, this Amendment No. 2 shall make no other changes, modifications, additions, or deletions to the Agreement or Amendment No. 1.

3) This Amendment No. 2 shall be attached to and included with the Agreement and Amendment No. 1 for all intents and purposes, including all bid solicitations or similar documents issued by the District, and shall continue in full force and effect until completion of the Project(s) as defined therein.

4) This Amendment No. 2 shall become effective when the District's governing board ratifies this Amendment No. 2 and it is executed by the District and the Council.

Dated: May 17, 2023

SANTA CLARA & SAN BENITO COUNTIES BUILDING & CONSTRUCTION TRADES COUNCIL

David Bini

David Bini
Executive Director

Dated: May 18, 2023

FREMONT UNION HIGH SCHOOL DISTRICT (FUHSD)

Name:
Title:

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CONTRACT DOCUMENTS

For all or a portion of the following Site:

Fremont High School New Art, Design, and Engineering Building Project
575 W. Fremont Ave.
Sunnyvale, CA 94087
APN: _____

By and between

Fremont Union High School District
589 W. Fremont Avenue
Sunnyvale, CA 94087

And

[Developer]
[Address]

Dated as of _____, 20__

PERFORMANCE BOND
(100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Fremont Union High School District, ("District") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Fremont High School New Art, Design, and Engineering Building Project

("Project" or "Contract") which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and _____ _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of

_____

Dollars ($_____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warrantees of materials and

workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Developer shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Developer remains. Nothing herein shall limit the District's rights or Developer or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

Principal	Surety
By	By
	Name of California Agent of Surety
	Address of California Agent of Surety
	Telephone No. of California Agent of Surety

Developer must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

PAYMENT BOND
Developer's Labor & Material Bond
(100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Fremont Union High School District, ("District") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Fremont High School New Art, Design, and Engineering Building Project

("Project" or "Contract") which Contract dated _____, 20__, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____ _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars ($_____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20___.

Principal	Surety
By	By
	Name of California Agent of Surety
	Address of California Agent of Surety
	Telephone No. of California Agent of Surety

Developer must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700, in relevant part, provides:

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

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

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

END OF DOCUMENT

PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION

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

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

CRIMINAL BACKGROUND INVESTIGATION /FINGERPRINTING CERTIFICATION

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

Developer certifies that it has taken at least one of the following actions (check all that apply):

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

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

Name: _____

Title: _____

NOTE: If Developer is a sole proprietor, and elects the above option, Developer must have the above-named employee's fingerprints prepared and submitted by District for submission to the DOJ, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by DOJ has been made.

☐ Pursuant to Education Code section 45125.2(a), the District will take appropriate steps to protect the safety of any pupils that may come in contact with Developer's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.2 shall not apply to Developer under the Contract.

☐ The Work on the Contract is either (i) at an unoccupied school site and no employee of Developer and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) if Developer's employees or any subcontractor or supplier of any tier of the Contract interacts with pupils, such interaction shall only take place under the immediate supervision and control of the pupil's parent or guardian or a school employee, so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Developer under the Contract.

[CONTINUED ON NEXT PAGE]

☐ The Developer, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Developer's employees and all of its Subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the DOJ has determined (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Developer performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. No work shall commence until the Department of Justice ascertains that Developer's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

A complete and accurate list of Developer's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto as ATTACHMENT "A;" and/or

☐ The Developer is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all Developer's employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and hereby agrees to the District's preparation and submission of fingerprints such that the DOJ may determine (A) that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work shall commence until the Department of Justice ascertains that Developer's employees and any subcontractors' employees have not been convicted of a felony as defined in Government Code Section 45122.1.

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

[CONTINUED ON NEXT PAGE]

ATTACHMENT "A"

List of Employees/Subcontractors

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

Name/Company: _____

If further space is required for the list of employees/subcontractors, attach additional copies of this page.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

TOBACCO-FREE ENVIRONMENT CERTIFICATION

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

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DISABLED VETERAN BUSINESS
ENTERPRISE PARTICIPATION CERTIFICATION

GENERAL INSTRUCTIONS

Section 17076.11 of the Education Code requires school districts using, or planning to use, funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount expended each year by the school district on projects that receive state funding. Therefore, lowest responsive responsible bidder awarded the Contract must submit this document to the District after issuance of the Notice of Award After Guaranteed Maximum Price, identifying the steps Developer took to solicit DVBE participation in conjunction with this Contract. Do not submit this form with your bids.

PART I – Method of Compliance with DVBE Participation Goals. Check the appropriate box to indicate your method of committing the contract dollar amount.

YOUR BUSINESS ENTERPRISE IS:	**AND YOU WILL**	**AND YOU WILL**
☐ Disabled veteran owned and your forces will perform at least 3% of this Contract	Include a copy of your DVBE letter from Office of Small Business and Disabled Veterans Business Enterprise Services ("OSB")*	Complete Part 1 of this form and the Certification
☐ Disabled veteran owned but is unable to perform 3% of this Contract with your forces	Use DVBE subcontractors /suppliers to bring the Contract participation to at least 3%	Include a copy of each DVBE's letter from OSB (including yours, if applicable), and complete Part 1 of this form and the certification
☐ **NOT** disabled veteran owned	Use DVBE subcontractors /suppliers for at least 3% of this Contract	
☐ Unable to meet the required participation goals after good faith efforts	Make good faith efforts, including contacts, advertisement and DVBE solicitation	Complete all of this form and the Certification

* A DVBE letter from OSB is obtained from the participating DVBE.

You must complete the following table to show the dollar amount of DVBE participation:

	TOTAL CONTRACT PRICE
A. Prime Bidder, if DVBE (own participation)	$
DVBE Subcontractor or Supplier	
Subtotal (A & B)	
Non-DVBE	
Total Bid	

PART II – Contacts. To identify DVBE subcontractors/suppliers for participation in your contract, you must contact each of the following categories. You should contact several DVBE organizations.

CATEGORY	**TELEPHONE NUMBER**	**DATE CONTACTED**	**PERSON CONTACTED**
The District, if any			*
OSB, which publishes a list of DVBE's; Internet Address: http://www.dgs.ca.gov/osbcr	(916) 323-5478 (916) 322-5060		*
DVBE Organization (List)			*

*Write "recorded message" in this column, if applicable.

PART III – Advertisement. You must advertise for DVBE participation in both a trade and focus paper. List the advertisement you place to solicit DVBE participation. Advertisements should be published at least fourteen (14) days prior to bid/proposal opening; if you cannot advertise fourteen (14) days prior, advertisements should be published as soon as possible. Advertisements must include that your firm is seeking DVBE participation, the project name and location, and your firm's name, your contact person, and telephone number. Attach copies of advertisements to this form.

FOCUS/TRADE PAPER NAME	**CHECK ONE**		**DATE OF ADVERTISEMENT**
	TRADE	**FOCUS**	

PART IV – DVBE Solicitations. List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

IF THE DVBE…..	**THEN…..**	**AND…..**
was selected to participate	Check "yes" in the "SELECTED" column	include a copy of their DVBE letter(s) from OSB
was **NOT** selected to participate	Check "NO" in the "SELECTED" column	state why in the "REASON NOT SELECTED" column
did not respond to your solicitation	Check the "NO RESPONSE" column.	

DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED	**SELECTED**		**REASON NOT SELECTED**	**NO RESPONSE**
	YES	**NO**		

A copy of this form must be retained by you and may be subject to a future audit.

CERTIFICATION

I, _____ certify that I am Developer's _____ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein.

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

ROOFING PROJECT CERTIFICATION

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

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

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

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

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

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

Date: _____

Proper Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

HAZARDOUS MATERIALS
PROCEDURES & REQUIREMENTS

1. **Summary**

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

2. **Notice of Hazardous Waste or Materials**

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

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

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

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

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

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

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

f. If Developer stops Work in connection with any hazardous condition and in any area affected thereby, Developer shall immediately redeploy its workers,

equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

3. **Additional Warranties and Representations**

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

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

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

4. **Monitoring and Testing**

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

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

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

5. **Compliance with Laws**

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

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

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

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

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

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

6. **Disposal**

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

b. Developer shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.

c. Developer shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Developer shall not use any disposal

facility to which District has objected. Developer shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

7. **Permits**

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

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

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

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

b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Developer in securing the permit or giving the notice, but Developer shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

8. **Indemnification**

To the fullest extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal

injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 960l *et seq*.).

9. **Termination**

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

END OF DOCUMENT

HAZARDOUS MATERIALS CERTIFICATION

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

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

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

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

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

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to Developer that:

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

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

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

1. Lead as a Health Hazard

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

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

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

2. Overview of California Law

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

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

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

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

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

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

b. Removal or encapsulation of materials containing lead;

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

d. Installation of products containing lead;

e. Lead contamination/emergency cleanup;

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

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

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

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

3. <u>Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act</u>

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

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

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

4. Developer's Liability

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

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

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

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

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

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

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

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

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

IMPORTED MATERIALS CERTIFICATION

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

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

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

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

_____

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

Date: _____

Proper Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

SKILLED AND TRAINED WORKFORCE CERTIFICATION

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

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

That Developer and its subcontractors at every tier will use 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 in accordance with Public Contract Code section 2600 et seq.

"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.

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

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

2. The percentage of either (A) skilled journeypersons employed by Developer or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by Developer or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the percentages set forth in the following chart for the applicable month:

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

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.

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

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

   b. 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 of the price of the prime contract.

That Developer and its subcontractors will demonstrate its compliance with the Skilled and Trained Workforce requirements by either of the following methods (check what applies):

☐ Using the form attached hereto, provide monthly reports to the District from Developer and its subcontractors demonstrating that they 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

☐ 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.

I hereby certify that I am aware of the provisions of section 17407.5 of the Education Code and sections 2600 through 2602 of the Public Contract Code and will comply with such provisions during the performance of the Work of this Contract and will bind all of my subcontractors at every tier, with the exception of the subcontractors identified in Public Contract Code section 2602, to comply with such provisions.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

SKILLED AND TRAINED WORKFORCE
MONTHLY REPORT
(COVER PAGE)

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____, 20_____

The undersigned hereby certifies that all the workers employed by the above-referenced contractor performing work in an apprenticeable occupation in the building and construction trades on the Project are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

The undersigned further certifies that the percentage of either (A) skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the apprenticeship graduation percentage required by Public Contract Code section 2601 for the particular calendar month.

The undersigned has demonstrated compliance with the apprenticeship graduation percentage by completing the accompanying Worksheet(s). A true and correct Worksheet for each apprenticeable occupation in the building and construction trades utilized by the above-referenced contractor for the particular calendar month is attached hereto, **totaling _____ attached page(s)**.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Signature: _____

Print Name: _____

Title: _____

SKILLED AND TRAINED WORKFORCE
MONTHLY REPORT
(WORKSHEET)

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____ 20__

Page ____ of ____ (Duplicate as needed. Submit a separate Worksheet for each apprenticeable occupation in the building and construction trades utilized by contractor.)

***Apprenticeable occupation: _____.**

A. If above-identified occupation is *acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher*, the apprenticeship graduation percentage requirement is at least 30 percent.

B. If the above-identified occupation is any other apprenticeable occupation, *excluding teamsters and occupations listed in subparagraph A, above*, the apprenticeship graduation percentage requirement is at least at least 30 percent in 2017, 40 percent in 2018, 50 percent in 2019, 60 percent in 2020.

Demonstrate compliance for the above-identified occupation by either Number of Skilled Journeypersons or Number of Hours of Work Performed by Skilled Journeypersons. Check and complete the method of compliance that applies:

☐ **Number of Skilled Journeypersons**:

1. Number of skilled journeypersons performing work in the apprenticeable occupation: _____
2. Number of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

☐ **Number of Hours of Work Performed by Skilled Journeypersons**:

1. Number of hours of work performed by skilled journeypersons in the apprenticeable occupation: _____
2. Number of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

*This Worksheet incorporates by reference all definitions in Public Contract Code section 2601, including, without limitation, the definitions of "apprenticeable occupation," "graduate of an apprenticeship program," and "skilled journeypersons."

END OF DOCUMENT

REGISTERED SUBCONTRACTORS LIST
(Labor Code Section 1771.1)

PROJECT: _____

Date Submitted (for Updates): _____

Developer acknowledges and agrees that it must clearly set forth below the name and Department of Industrial Relations (DIR) registration number of each subcontractor **for all tiers** who will perform work or labor or render service to Developer or its subcontractors in or about the construction of the Work **at least two (2) weeks before the subcontractor is scheduled to perform work**. This document is to be updated as all tiers of subcontractors are identified.

Developer acknowledges and agrees that, if Developer fails to list as to any subcontractor of any tier who performs any portion of Work, the Contract is subject to cancellation and Developer will be subjected to penalty under applicable law.

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

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Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

ESCROW AGREEMENT IN LIEU OF RETENTION
Public Contact Code Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 20___, by and between the Fremont Union High School District ("District"), whose address is 589 W. Fremont Avenue, Sunnyvale, California 94087, and _____ ("Developer"), whose address is _____, and _____ _____ ("Escrow Agent"), a state or federally chartered bank in the state of California, whose address is _____ _____.

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

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

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

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

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

   Securities shall be held in name of Fremont Union High School District, and shall designate Developer as beneficial owner.

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

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

4. Developer shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Developer $_____ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Developer, and Escrow Agent.

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

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

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

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

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

[CONTINUED ON FOLLOWING PAGE]

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

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Escrow Agent:

_____
Title

_____
Name

_____
Signature

_____
Address

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

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

On behalf of District:

_____
Title

_____
Name

_____
Signature

_____
Address

On behalf of Developer:

_____
Title

_____
Name

_____
Signature

_____
Address

END OF DOCUMENT

GUARANTEE FORM

_____ ("Developer") hereby agrees that the _____ ("Work" of Developer) which Developer has installed for the Fremont Union High School District ("District") for the following project:

_____ Project

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

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

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

Date: _____

Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

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

Name: _____

Address: _____

Phone Number: _____

Email: _____

END OF DOCUMENT

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

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

RECITALS

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

6. Guarantees and warranties for the Work, duty to defend, indemnify and hold harmless the District, and any other continuing obligation of Developer, shall remain in full force and effect as specified in the Contract Documents.

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

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

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

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

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

FREMONT UNION HIGH SCHOOL DISTRICT

Signature: _____

Print Name: _____

Title: _____

DEVELOPER:

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

APPENDIX C-1

NON-COLLUSION DECLARATION
(Public Contract Code Section 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid/proposal.
[Title] [Name of Firm]
The bid/proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid/proposal is genuine and not collusive or sham. The bidder/proposer has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder/proposer has not directly or indirectly colluded, conspired, connived, or agreed with any bidder/proposer or anyone else to put in a sham bid/proposal, or to refrain from bidding/proposing. The bidder/proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid/proposal price of the bidder/proposal or any other bidder/proposer, or to fix any overhead, profit, or cost element of the bid/proposal price, or of that of any other bidder/proposer. All statements contained in the bid/proposal are true. The bidder/proposer has not, directly or indirectly, submitted his or her bid/proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid/proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder/proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder/proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____,
[Date]
at _____, _____.
[City] [State]

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

APPENDIX C-2

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

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

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

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

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

CERTIFICATION:

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

Vendor Name/Financial Institution (Printed)	*Federal ID Number (or n/a)*
By (Authorized Signature)	
Printed Name and Title of Person Signing	*Date Executed*

END OF DOCUMENT

APPENDIX C-3

OFF-ROAD DIESEL-FUELED FLEET CERTIFICATION

Title 13 CCR sections 2449, 2449.1, and 2449.2, in compliance with Government Code sections 11346.2, subdivision (a)(3), and 11346.8, subdivision (c), applies to construction contractors who own or operate within California any vehicles with a diesel-fueled or alternative diesel fueled off-road compression-ignition engine with maximum power (max hp) of 25 horsepower (hp) or greater provided that the vehicle cannot be registered and driven safely on-road or was not designed to be driven on-road, even if it has been modified so that it can be driven safely on-road.

Section 2449(i), in relevant part, provides:

(1) For a project involving the use of vehicles subject to this regulation, the prime contractor must obtain copies of the valid Certificate of Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

(2) No prime contractor or public works awarding body, as applicable, shall enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

(3) The Certificates of Reported Compliance received by the prime contractor for a project must be retained for three (3) years after that project's completion. Upon request by California Air Resources Board ("CARB"), these records must be provided to CARB within five (5) business days of the request.

(4) Situations in which prime contractors or public works awarding bodies, as applicable, are contracting for projects that are considered emergency operations, as defined in section 2449(c)(18), are exempt from the requirements in section 2449(i)(1)-(3), but must still retain records verifying vehicles subject to the regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

Section 2449(j), in relevant part, also states:

(1) Between March 1 and June 1 of each year, a prime contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in section 2449(n), from all fleets that have an ongoing contract with the prime contractor as of March 1 of that year. Prime contractors must not write contracts to evade this requirement.

(2) Prime contractors shall only allow fleets with valid Certificates of Reported Compliance on the prime contractor's job sites.

(3) If the prime contractor discovers that any fleet intending to operate vehicles subject to this regulation for the prime contractor does not have a valid Certificate of Reported Compliance, as defined in section 2449(n), or if the prime contractor observes any noncompliant vehicles subject to the regulation on the prime contractor's job site, then the prime contractor must report specified information regarding the fleet to CARB within five (5) business days of such discovery.

(4) Upon request by CARB, the prime contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to this regulation operating at the job site or for the prime contractor.

(5) The prime contractor shall prominently display signage for any project where vehicles subject to this regulation will operate for eight (8) calendar days or more. The signage must be posted by the eighth calendar day from which the first vehicle operates. The signage will be in lettering larger than size 14-point type and displayed in a conspicuous place where notices to employees are customarily posted at the job site or where there is employee foot traffic. If one of the above locations is also viewable by the public, it should be posted at that location. The signage must include specified information regarding idling regulations for In-Use Off-Road Diesel-Fueled Fleets with directions on how to report observed noncompliance of the provided regulations to CARB.

I am aware of the provisions of Title 13 CCR sections 2449, 2449.1, and 2449.2, which apply to every contractor who owns or operates off-road diesel fleet vehicles in California, and I will comply with such provisions, including providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable, with its bid.

Date: _____

Proper Name of Developer: _____

Signature: _____

Print Name: _____

Title: _____

Bidder must attach valid Certificate(s) Reported Compliance with the Regulation for In-Use Off-Road Diesel-Fueled Fleets provided by CARB for the fleet selected for the contract and their listed subcontractors, if applicable, to this form.

END OF DOCUMENT

APPENDIX C-4

Allowable General Condition Costs
Construction Phase Scope Detail

	Project (On Site Jobsite Staff)	Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Operations Manager		X		
2	Project Manager		X		
3	Project Superintendent		X		
4	Project Engineer		X		
5	Home Office Engineer		X		
6	Scheduling Engineer		X		
7	Field Engineer		X		
8	Draftsman/Detailer		X		
9	Record Drawings		X		
10	Field Accountant		X		
11	Time Keeper/Checker		X		
12	Secretarial/Clerk Typist		X		
13	Independent Surveyor	X			
14	Safety &. E.E.O. officer		X		
15	Runner/Water Boy		X		
16	Vacation Time/Job Site Staff		X		
17	Sick Leave/Job Site Staff		X		
18	Bonuses/Job Site Staff			X	
19	Quality Control Program		X		
20	Qualified SWPPP Practitioner (QSP)	X			
21	SWPPP Creation, Approval, Notifications	X			

	Temporary Utilities	Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Telephone Installation		X		
2	Telephone Monthly Charges		X		
3	Elect Power Installation	X			
4	Elect Power Distribution - Wiring/Spider boxes/ Lighting for construction	X			
5	Elect Power Monthly Charges				X
6	Water Service for construction	X			
7	Heating & Cooling Costs for construction	X			
8	Light Bulbs & Misc. Supplies for construction	X			
9	Clean-Up-Periodical	X			
10	Clean-Up-Final	X			
11	Dump Permits and Fees	X			
12	Recycling/Trash Dumpster Removal/Hauling	X			
13	Flagger/Traffic Control	X			
14	Dust Control	X			
15	Temporary Road and Maintenance if	X			
16	Trash Chute & Hopper (if applicable)	X			

Direct Job Costs		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Wages of Construction Labor	X			
2	Labor/Fringe Benefits & Burden	X			
3	Subcontract Costs	X			
4	Material & Equipment/Included		X		
	a. Contractor Owned Equip, trucks		X		
	b. Small Tools - Purchase		X		
	c. Small Tools - Rental		X		
5	Warranty Work & Coordination			X	

Temporary Facilities		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Office Trailer including shared office for IOR & CM (office must include lockable door, 2 desks, 2 chairs, 1 file cabinet, and Wi-Fi connection)		X		
2	Storage Trailer & Tool Shed Rental		X		
3	Office Furniture/Equip/computers		X		
4	Xerox Copies/Misc Printing		X		
5	Postage/UPS/FedEx		X		
6	Project Photographs		X		
7	Temporary Toilets		X		
8	Project Sign		X		
9	Temporary Fencing/Enclosures		X		
10	Covered Walkways if required	X			
11	Barricades	X			
12	Temporary Stairs	X			
13	Opening Protection	X			
14	Safety Railing & Nets	X			
15	Drinking Water/Cooler/Cup		X		
16	Safety/First Aid Supplies		X		
17	Fire Fighting Equipment		X		
18	Security Guards		X		
19	Watchman Service		X		
20	Phone/fax lines, cell phones, WiFi		X		
21	Temporary "Swing space" portables to house teachers and students as required for phasing				X
22	Utility connections and civil work needed for temporary "swing space" portables as required for phasing	X			

Miscellaneous Project Costs		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Performance and Payment Bonds				
2	Developer-provided insurance				
3	Printing - Drwgs & Specs (Max of 15 sets)				X
4	Initial Soils Investigation				X
5	Testing and Inspection				X
6	Maintenance After Occupancy				X
7	Facility Operator/Training	X			
8	Fees				X

Hoisting		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Hoist & Tower Rental	X			
2	Hoist Landing & Fronts	X			
3	Hoist Operator	X			
4	Hoist Safety Inspections	X			
5	Hoist Material Skips/Hoppers	X			
6	Erect & Dismantle Hoists	X			
7	Crane Rental	X			
8	Crane Operators	X			
9	Crane Safety Inspections	X			
10	Erect & Dismantle Crane	X			
11	Fuel, Repairs, Maintenance	X			
12	Crane Raising/Jumping Costs	X			
13	Safety Inspections	X			
14	Forklift Rental	X			
15	Forklift Operator	X			
16	Forklift Safety Inspections	X			
17	Fuel, Repairs, Maintenance	X			

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Contractor's Main Office Staff		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Corporate Executives			X	
2	Principal in Charge			X	
3	Estimating Cost Engineering			X	
4	Value Engineering			X	
5	Scheduling			X	
6	Drafting and Detailing			X	
7	Purchasing & Contracts			X	
8	Accounting & Bookkeeping			X	
9	Safety & E.E.O Officer			X	
10	Secretarial			X	
11	Clerk/Typist			X	
12	Computer/Data Processing			X	
13	Legal (General Services/Pertaining to			X	
14	Travel & Subsistence			X	
15	Fringe Benefits & Burden			X	
16	Vacation Time/Main Office			X	
17	Bonuses/Main Office			X	
General Conditions Total Cost transfer to Fee Proposal			$		

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APPENDIX D
PROPOSAL FORMAT

Respondents may submit a proposal for the Project identified in **APPENDIX A** to this RFQ/P. All proposals must conform to the format provided below. Proposals should be based on the estimated project cost in **APPENDIX A** to this RFQ/P.

Proposing Firm Name: _____

Project: Fremont High School New Art, Design, and Engineering Building Project

Item	Amount
Proposed Preconstruction Services Fee (Not To Exceed)	$_____
General Conditions (identify in sufficient detail for evaluation, including all components that Contractor will include as General Conditions and not as part of subcontractors' scope of other direct costs of work. *Additional sheets may be used for backup regarding proposed General Conditions*.)	$_____
General Conditions staffing (below)	
Project Executive (hourly rate)	$_____
Project Manager (hourly rate)	$_____
Project Superintendent (hourly rate)	$_____
Project Engineer (hourly rate)	$_____
Mark-up on Subcontractor work.	_____%
Mark-up on self-performed work.	_____%
Fee (inclusive of overhead & profit) (as a percentage of direct costs)	_____%
Bond & insurance cost (as a percentage of direct costs)	_____%
Proposed Construction Contingency (applied to errors and omissions)	$_____ Or _____%
Proposed Allowances (if any)	$_____
Other costs (identify in sufficient detail for evaluation, either as a lump sum or a percentage of direct costs)	$_____ Or _____ _____%