



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 12.1a

Meeting Date: June 9, 2022

Subject: Approval/Ratification of Grants, Entitlements, and Other Income Agreements
Approval/Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Business Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

LCAP Goal(s): College, Career and Life Ready Graduates; Safe, Emotionally Healthy, Engaged Students; Family and Community Empowerment; Operational Excellence

Documents Attached:

1. Grants, Entitlements, and Other Income Agreements
2. Expenditure and Other Agreements
3. Recommended Bid Awards – Facilities Projects

<p>Estimated Time of Presentation: N/A Submitted by: Rose Ramos, Chief Business Officer Dan Sanchez, Purchasing Manager Approved by: Jorge A. Aguilar, Superintendent</p>
--

GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS – REVENUE

<u>Contractor</u>	<u>New Grant</u>	<u>Amount</u>
<u>CHILD DEVELOPMENT</u>		
Sacramento Employment and Training Agency (SETA) A22-00062.1	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$166,117 No Match
<p>8/1/22 – 7/31/23: Cost-of-Living Adjustment and Quality Improvement Grant funding application for Head Start Program. The Child Development Department enrolls and serves 736 Head Start children within part-day preschool and full-day Children’s Centers. Children ages 3-5 enrolled in the Head Start Program receive comprehensive services, including mental health and health screenings. Families are encouraged to enter into partnership agreements to set family goals. Goals include completing school, seeking new employment opportunities, nutrition education, and learning child development strategies. Registered nurses, and other health professionals provide direct services and referrals to program participants. Upon submission and approval of Child Development’s COLA and Quality Improvement grant funding application for Head Start the SCUSD Board of Education authorizes SETA to serve as the grantee, and if awarded, authorizes the Chief Business Officer to execute the sub-grant agreement with reasonable modifications and any other documents required by the funding source.</p>		

EXPENDITURE AND OTHER AGREEMENTS

Restricted Funds

FACILITIES SUPPORT SERVICES

Lionakis Architects SA23-00015 New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	5/17/22: Architectural design services for the Edward Kemble Elementary / Cesar Chavez Intermediate New Construction project. The Facilities Master Planning process identified Edward Kemble (grades K-3) and Cesar Chavez (grades 4-6), which are located on adjacent lots in the Meadowview area, for Vision projects – facility improvement projects that will provide students and communities with a learning environment that meets the District’s design standards for all six “educational petals,” including Learning Environments, Inquiry and Experiential Learning, Individualized Student Support, Fitness and Athletics, Safety and Security, and Dining Experience and Nutrition. Visionary projects are prioritized using equity indices to address the needs of under-resourced, historically marginalized neighborhoods and the student populations identified in the LCAP’s goals and objectives with the intent that capital project funding is directed toward addressing the most significant equity and opportunity gaps. Lionakis was selected for this project from the District’s pool of architects qualified through an RFQ process in December 2021.	\$3,910,000 Measure Q Funds
Kitchell CEM SA23-00018 New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	5/26/22: Project and construction management services for the Edward Kemble Elementary / Cesar Chavez New Construction project. Kitchell was selected for this project from the District’s pool of construction managers qualified through an RFQ process in December 2021.	\$2,790,300 Measure Q Funds

<p>Nacht & Lewis Architects SA22-00484</p> <p>New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>5/19/22: Architectural design services for the Albert Einstein Core Academic Modernization project. Project will include general campus upgrades and deferred maintenance projects – specific scope to be determined after reviewing site conditions and maintenance records and meetings with site principal and Facilities staff.</p> <p>Nacht & Lewis was selected for this project from the District’s pool of architects qualified through an RFQ process in December 2021.</p>	<p>\$668,813 Measure Q Funds</p>
---	---	--

SPECIAL EDUCATION

<p>BookNook SA22-00527</p> <p>New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>6/13/22 – 9/30/22: Approval is requested for agreement with BookNook to provide comprehensive virtual tutoring services during the summer of 2022. The agreement includes 20-session tutoring packages for up to 3,000 students to be delivered to small groups (1:4). Students are matched with a dedicated tutor for the duration of the summer program. Tutors are selected from a network of nearly 70,000 qualified and vetted tutors who have a bachelor’s degree or above and at least one year of teaching experience.</p>	<p>\$776,500 Special Education Funds</p>
---	---	--

BookNook both tracks student achievement in real time through data automatically collected by its platform and also periodically engages external university evaluators to access anonymized school district data sets to further validate efficacy.

Most recently, Teachers College at Columbia University examined outcomes for the BookNook’s largest customer at the time, Prince George’s County Public Schools. Researchers found that students tutored by BookNook made 40% more growth on teacher-administered assessments than similar students who did not receive tutoring, putting the company at a strong, ESSA Tier III level of data evidence – the first and only virtual tutoring program to meet this rigorous federal standard.

Because of the success of the BookNook program at other districts, and because there are no other vendors capable of providing the services and at the scale required by SCUSD (see Sole Source letter included in agreement), the Special Education and Purchasing departments recommend BookNook for award of this contract.

<p>San Joaquin County Office of Education SA23-00003</p> <p>New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>7/1/22 – 6/30/25: 3-year agreement with SJCOE for license of the Special Education Information System (SEIS). SEIS is a state reporting system that houses Special Education student information including Individualized Education Plan (IEP) forms, and other documentation and data. Records can be easily transferred between districts who use SEIS (all Districts in the Sacramento area use SEIS). Annual cost is \$10 per student based on the Special Education enrollment as of February of the preceding year.</p>	<p>Annual Cost: \$74,010</p> <p>Total: \$222,030 Special Education Funds</p>
---	--	--

STUDENT SUPPORT

<p>City Year SA23-00017</p> <p>New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>7/1/22 – 6/30/24: Continued implementation of City Year’s Whole School, Whole Child Model at Leataata Floyd, Father Keith B. Kenny, Oak Ridge, Earl Warren, Rosa Parks and Fern Bacon schools. City Year will place sixty-six (66) AmeriCorps members, ages 18-25, to serve in SCUSD schools throughout the school day (before, during and after school), in-person and/or virtually as needed. In the 23-24 school year, City Year will add additional corpmembers and expand to a seventh school site which will be identified later.</p>	<p>2022-23: \$907,500</p> <p>2023-24: \$953,700</p> <p>Total: \$1,861,200 Title I Funds</p>
--	--	---

City Year will support Whole School tier 1 initiatives, morning greetings, whole classroom support, Google classroom community building, extra-curricular group connectedness, extended day programming, family engagement (phone calls home, family engagement events, reinforcement of positive attendance), academic intervention in ELA and Math, social emotional skill development, and homework support. In a coordinated effort with site principals and teachers, City Year will identify focus students in Grades 2- 8 to support with appropriate academic and social emotional support.

Student Support seeks to renew this agreement for the 11th year because of the success of the partnership to date. Multiple studies demonstrate City Year’s impact at the whole school and individual student level. A Johns Hopkins University study found that the more time students spend with City Year AmeriCorps members the better students’ social-emotional, academic and attendance outcomes. Additionally, a study by Policy Study Associates found that sites supported by City Year are two to three times more likely to improve on state English and Math assessments. In site surveys, administrators and classroom educators agreed that City Year helped students feel a sense of belonging and helped support engagement and participation.

Through the partnership City Year, the District will aim to continue to increase academic gains, improve school attendance, and enhance student wellness.

STUDENT SUPPORT & HEALTH SERVICES

<p>Vestra Labs, LLC SA22-00201</p> <p>New Contract: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>10/7/21 – 6/30/23: Approval is requested for amendment to agreement for staffing for COVID testing at sites and Serna. In March, the Board approved Amendment No. 2 to increase staffing from 30 to 60 technicians through June 30, 2022. With this Amendment No. 3, staffing of 60 technicians will be extended through July 31, 2022 as infection and hospitalization rates have begun to rise again. Amendment No. 3 will also provide for 30 technicians from August 1, 2022 through June 30, 2023. Staffing levels may be adjusted up or down at a later date depending on future needs.</p>	<p>Current amount: \$2,688,000</p> <p>Amendment 3: \$2,496,000</p> <p>New Total: \$5,184,000 ESSER III Funds</p>
---	--	--

Unrestricted Funds

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>STUDENT SUPPORT</u>		
ATvantage, LLC SA23-00001	7/1/22 – 6/30/23: Two-year agreement for athletic trainer staffing at 6 high schools: C.K. McClatchy, Hiram Johnson, John F. Kennedy, Luther Burbank, Rosemont and West Campus. Athletic trainers support basketball, football, soccer and track programs at each of the sites. Athletic trainers staffed by ATvantage are certified by the National Athletic Trainers' Association and are "highly qualified, multi-skilled health care professionals who collaborate with physicians to provide preventative services, emergency care, clinical diagnosis, therapeutic intervention and rehabilitation of injuries and medical conditions. Athletic trainers work under the direction of a physician as prescribed by state licensure statutes." Prior to the 2021-22 school year the above schools have contracted directly with independent athletic trainers who had varying levels of qualifications and were not all certified. Though certification is not required by state law, utilizing ATvantage's services means that all sites will have athletic trainers with similar qualifications and all will be certified.	\$342,240 General Fund
New Contract: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Normally services of this type and cost would require a competitive selection process such as a Request for Proposal. However, where competitive bidding proposals do not produce an advantage, competitive bidding does not apply. ATvantage is the only athletic trainer staffing agency serving the Sacramento region. Neighboring districts, such as EGUSD, have advertised for bids and only received responses from ATvantage, including as recently as June 2021. Because of that, and because the districts utilizing their services recommend ATvantage, Purchasing Services found it was in the best interest of the District to move forward with a contract with ATvantage without issuing a formal Request for Proposals.	

RECOMMENDED BID AWARDS – FACILITIES PROJECTS

Project:	Lease-Leaseback Agreement for Fern Bacon, Albert Einstein, and John Still HVAC Replacement
Recommendation:	Approve lease-leaseback contract with Swinerton Builders for preconstruction services of \$2,500 for this project. Authorize staff to pursue a lease-leaseback contract with Swinerton Builders for construction services for this project using a fee-based contract with a percentage fee of 2%. Once plans are finalized, approved by Division of State Architect and the Guaranteed Maximum Price (GMP) of the project is developed the construction contract will be submitted to the Board for approval. The cost of construction is currently estimated at \$3,300,000.
Amount/Funding:	\$2,500 - ESSER II Funds

Project: Lease-Leaseback Agreement for Rosa Parks / Leonardo da Vinci HVAC Replacement

Recommendation: Approve lease-leaseback contract with S+B James Construction for preconstruction services of \$6,500 for this project. Authorize staff to pursue a lease-leaseback contract with S+B James Construction for construction services for this project using a fee-based contract with a percentage fee of 4%. Once plans are finalized, approved by Division of State Architect and the Guaranteed Maximum Price (GMP) of the project is developed, the construction contract will be submitted to the Board for approval. The cost of construction is currently estimated at \$2,200,000.

Amount/Funding: \$6,500 - ESSER II Funds

Recent state legislation (AB2316) made significant changes to K-12 lease-leaseback statutes, Education Code §17400 et seq. AB2316 requires a competitive process in selecting the lease-leaseback contractor, and in some cases, authorizes pre-construction services by the same lease-leaseback contractor.

Per AB2316, staff solicited "Request for Proposals" by advertising and sending notices directly to contractors. Proposals received were evaluated and ranked based on scoring criteria used to determine "best value".



Agreement for Architectural Services

between

Sacramento City Unified School District

and

Lionakis

**Edward Kemble/Cesar Chavez Property – New School
Project**

Dated: June 9, 2022

TABLE OF CONTENTS

Article 1	Definitions.....	1
Article 2	Scope, Responsibilities and Services of Architect.....	3
Article 3	Architect Staff.....	8
Article 4	Schedule of Services	9
Article 5	Construction Cost Budget.....	9
Article 6	Fee and Method of Payment.....	10
Article 7	Payment for Extra Services or Changes.....	11
Article 8	Ownership of Data.....	12
Article 9	Termination of Contract.....	13
Article 10	Indemnity / Architect Liability.....	15
Article 11	Fingerprinting and Conduct on Project Site.....	16
Article 12	Responsibilities of the District.....	16
Article 13	Liability of District.....	17
Article 14	Nondiscrimination.....	17
Article 15	Insurance.....	17
Article 16	Covenant against Contingent Fees.....	18
Article 17	Entire Agreement/Modification.....	18
Article 18	Non-Assignment of Agreement.....	18
Article 19	Law, Venue.....	18
Article 20	Alternative Dispute Resolution.....	19
Article 21	Tolling of Claims.....	19
Article 22	Attorneys' Fees.....	19
Article 23	Severability.....	20
Article 24	Employment Status.....	20
Article 25	Certificate of Architect.....	21
Article 26	Cost Disclosure - Documents and Written Reports.....	21
Article 27	Notice & Communications.....	22
Article 28	Disabled Veteran Business Enterprise Participation.....	22
Article 29	District's Right to Audit.....	22
Article 30	Other Provisions.....	23
Article 31	Exhibits "A" through "H".....	24

EXHIBIT "A" – RESPONSIBILITIES AND SERVICES OF ARCHITECT	A-1
EXHIBIT "B" – CRITERIA AND BILLING FOR EXTRA SERVICES	B-1
EXHIBIT "C" – SCHEDULE OF SERVICES	C-1
EXHIBIT "D" – PAYMENT SCHEDULE	D-1
EXHIBIT "E" – INSURANCE REQUIREMENTS	E-1
EXHIBIT "G" – IRAN CONTRACTING ACT CERTIFICATION	F-1
EXHIBIT "H" – VACCINATION STATUS CERTIFICATION	F-1

AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services is made as of May 5, 2022, between the Sacramento City Unified School District, a California public school district ("District"), and Lionakis ("Architect") (collectively "Parties"), for the following project ("Project"):

New school design and construction on the property of Edward Kemble/Cesar Chavez.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions of words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The Architect identified in the first paragraph of this Agreement, including all Consultants to the Architect. The term Architect means the Design Professional in General Responsible Charge on this Project.
 - 1.1.3. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District's Contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect ("DSA") has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.

- 1.1.6. **Construction Budget**: The total amount of funds indicated by the District for the entire Project plus all other costs, including design, construction, administration, and financing.
- 1.1.7. **Construction Change Documents (“CCD”)**: The documentation of changes to the DSA-approved construction documents.
- 1.1.8. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Architect and the Architect’s Consultants, the cost of land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
- 1.1.9. **Construction Manager**: The District’s representative on the Project if the District retains a construction manager, project manager, or owner’s representative.
- 1.1.10. **Contractor**: One or more licensed contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.11. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
- 1.1.12. **District**: The Sacramento City Unified School District.
- 1.1.13. **DSA**: The Division of the State Architect.
- 1.1.14. **Extra Services**: District-authorized services outside of the scope in **Exhibit “A”** or District-authorized reimbursables not included in Architect’s Fee.
- 1.1.15. **Laboratory of Record**: The District-designated laboratory(ies) for testing of concrete, soils, materials, and other required testing.
- 1.1.16. **Project**: District’s New School Kemble/Chavez Property Project at 7500 32nd Street, Sacramento, CA 95822 & 7495 29th Street, Sacramento, CA 95822.

- 1.1.17. **Record Drawings:** A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.18. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.19. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, and Services of Architect

- 2.1. Architect shall render the Services described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed signed by the District representative. Architect's Services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.2. Architect and its Consultants shall provide Services for the Project (i) using its professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects the size, scope and complexity of the Project for California school districts in or around the same geographic area of the District; (iii) the terms of this Agreement; and (iv) in accordance with said standards regarding application and interpretation of applicable law, code, rule or regulation at the time the Services are rendered ("Standard of Care"). All persons providing professional services hereunder shall be properly licensed as required by California law.
- 2.3. The District intends to award the Project to Contractor(s) pursuant to a competitive bid process. District reserves its right to use alternative delivery methods and the Architect's scope of work may be adjusted accordingly.
- 2.4. Architect acknowledges that all California public school districts are obligated to develop and implement the following storm water requirements for the discharge of storm water to surface waters from its construction and land disturbance activities where the project disturbs one (1) or more acres of land and is not part of a larger common plan of development or sale, the project disturbs one acre or more of land, or the project disturbs less than one (1) acre of land but is part of a larger common

plan of development or sale, or where the District engages in maintenance (e.g., fueling, cleaning, repairing) or transportation activities.

2.4.1. Architect shall provide the design for the Project, without limitation:

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

24.1.2. A Storm Water Pollution Prevention Plan ("SWPPP") that contains specific best management practices ("BMPs") and establishes numeric effluent limitations.

2.4.2. Architect shall conform its design work to the District's storm water requirements indicated above, that are approved by the District and applicable to the Project, at no additional cost to the District. In addition, as required Architect shall develop a grading and drainage plan and a site plan from architectural information showing a final development of the site. This drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The Services described in this subparagraph shall be provided by a professional civil engineer who contracts with or is an employee of the Architect.

2.5. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of the Project including, but not limited to: architects; mechanical, electrical, structural and civil engineers; landscapers; and interior designers, licensed as such by the State of California as part of the Basic Services under this Agreement. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject Architect's use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant employed by the Architect under terms of the Agreement. Architect shall require each of the Consultants retained by it to execute agreements with standard of care and indemnity provisions commensurate with this Agreement, but Architect shall remain solely responsible and liable to District for all matters covered by this Agreement.

2.6. Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or

management of other work related to the Project. This shall include, without limitation, coordination with State labor compliance, if any. If the Architect employs Consultant(s), the Architect shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of State labor compliance, if any.

2.7. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Department of Education, the Office of Public School Construction, the Department of General Services, DSA, including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, the State Fire Marshal and any regulatory office or agency that has authority for review and supervision of school district construction projects.

2.7.1. If the Project is subject to DSA jurisdiction, then Architect, and its Consultants, if any, shall comply with all the DSA requirements, including without limitation, all the requirements included and/or referenced in the following forms, bulletins ("BU"), interpretations of regulations ("IR"), policies ("PL"), or procedures ("PR"):

2.7.1.1. DSA IR A-6, Construction Change Document Submittal and Approval Process.

2.7.1.2. DSA IR A-18, Use of Construction Documents Prepared by Other Professionals.

2.7.1.3. DSA IR A-24, Construction Phase Duties of the School District, Contractor and Design Professional.

2.7.1.4. DSA PR 07-01: Pre-Check Approval Process.

2.7.1.5. DSA PR 07-02: Over-The-Counter Review of Projects Using Pre-Check Approved Design.

2.7.1.6. DSA PR 18-04.BB18: Electronic Plan Review for Design Professionals of Record Using Bluebeam 2018.

2.7.1.7. DSA PR 18-09.BB18: Electronic Plan Review for Over-the-Counter ("OTC") Projects Using Bluebeam 2018.

2.7.1.8. Form DSA PR 13-01, Construction Oversight Process.

2.7.1.8.1. Each of Architect's duties as provided in the DIR Construction Oversight Process shall be

performed timely so as not to result in any delay to the Project.

2.7.1.9. Form DSA PR 13-02, Project Certification Process.

2.7.2. Notwithstanding the DSA forms, BUs, IRs, PLs, or PRs referenced anywhere in this Agreement, each of which is current as of the Effective Date, all Projects subject to DSA's jurisdiction shall be submitted for review, back check, and approval, under the electronic plan review process ("EPR process"), rather than paper submission, for all projects submitted to DSA. Architect, and its Consultants, if any, shall comply with the EPR process and related DSA procedures, including, without limitation, DSA PR 18-04.BB18 and DSA PR 18-09.BB18, and any subsequent or replacement procedures relating to the EPR process promulgated by DSA. Any reference herein to a particular DIR form, BU, IR, PL, or PR, shall mean and include the then-current DIR form, BU, IR, PL, or PR, respectively, and, to the extent that the EPR process has superseded such form or paper submission process, the EPR process then in effect shall control.

- 2.8. Architect shall provide Services as required to obtain any local, state and/or federal agencies' approval for on-site and off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.9. Architect shall coordinate the work of the District's DSA project inspector(s) ("Project Inspector(s)") and the Laboratory of Record. Architect shall provide code required supervision of special inspectors not provided by the Laboratory of Record.
- 2.10. Architect shall give efficient supervision to Services, using its professional skill and attention. Architect shall carefully study and compare all contract documents, drawings, specifications, and other instructions ("Contract Documents") and shall at once report to District, Construction Manager, and Contractor, any error, inconsistency, or omission that Architect or its employees may discover, in writing, with a copy to District's Project Inspector(s). Architect shall have responsibility for discovery of errors, inconsistencies, or omissions in its own Contract Documents and that of its Subconsultants, but shall have no responsibility for District hired consultants.
- 2.11. Architect recognizes that the District may obtain the services of a Construction Manager and that Architect may have to assume certain coordination and management responsibilities, including tracking Requests

for Information ("RFI"), providing RFI responses, and leading all coordination meetings between the District, Project Inspectors, and Contractors on the Project. The District reserves the right to retain the services of a Construction Manager at any time. The Construction Manager, if any, shall be authorized to give Architect Services authorizations and issue written approvals and notices to proceed on behalf of District. The District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager, unless that task indicates it shall be performed by the Governing Board of the District. In addition, the District may have a constructability review of Architect's design documents. Architect shall conform any design documents to the constructability review as part of the Services under this Agreement and shall not be entitled to any compensation as Extra Services for this activity.

- 2.12. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.13. As part of the basic Services pursuant to this Agreement, Architect is not responsible for:
 - 2.13.1. Ground contamination or hazardous material analysis.
 - 2.13.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 2.13.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District.
 - 2.13.4. Historical significance report.
 - 2.13.5. Soils investigation.
 - 2.13.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**
 - 2.13.7. Topographic surveys of existing conditions

2.13.8. State and Local agency fees.

2.13.9. Testing and inspection

Article 3. Architect Staff

3.1. Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. Architect agrees that the following key people in Architect’s firm shall be associated with the Project in the following capacities:

Principal In Charge: Laura Knauss

Project Director: Brian Bell

Project Architect(s): Jennifer Quigley

Major Consultants:

Electrical/Low Voltage: Engineering Enterprise

Mechanical/Fire Sprinkler: Capital

Structural: Lionakis

Civil: Warren

Landscape: Roach & Campbell

Cost Estimating: Cumming

Door Hardware: Opening Consultants

Food Service: AMD

3.3. Architect shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel cease to be employed by Architect. In either case, the District shall be allowed to interview and approve replacement personnel.

3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice Architect shall have five (5) calendar days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this paragraph.

- 3.5. Architect represents that Architect 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 Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 3.6. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

Article 4. Schedule of Services

Architect shall commence Services under this Agreement upon receipt of a written Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the schedule in **Exhibit "C."** Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's or its Consultant(s)' reasonable control.

Article 5. Construction Cost Budget

- 5.1. Architect hereby accepts the District's established Construction Cost Budget and Project scope. In accordance with **Exhibit "A,"** the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase. The District and Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect.
- 5.2. Architect shall complete all Services as described in **Exhibit "A,"** including all plans, designs, drawings, specifications and other Contract Documents, so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.4 occur:

- 5.3.1. Give Architect written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.3.2. Authorize Architect to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.
 - 5.3.3. Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
 - 5.3.4. Within three (3) months' time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District.
- 5.4. If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.3 above:
- 5.4.1. The lowest responsive base bid received is in excess of five percent (5%) of the Construction Cost Budget; or
 - 5.4.2. If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
 - 5.4.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

Article 6. Fee and Method of Payment

- 6.1. The District shall pay Architect for all Services contracted for under this Agreement an amount equal to the following ("Fee"):

A fixed fee amount of \$3,900,000.00 The fee represents 6% of the proposed construction value of \$65 million. At the completion of Schematic Design phase, a one-time fee reconciliation to a final, confirmed construction cost shall occur.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and will be billed at a multiple of 1.10%

the expenses incurred. These charges include, but are not limited to, expenses incurred which are directly related to the Project, such as reproductions, plans and plots for owner, agency or contractor's use, standard form documents, postage, handling and delivery of Instruments of Service, and mileage. Reimbursable expenses are not expected to exceed \$10,000. All reimbursable expenses must be pre-approved by District.

- 6.2. The District shall pay Architect the Fee pursuant to the provisions of **Exhibit "D."**
- 6.3. Architect shall bill for performance of Services under this Agreement in accordance with **Exhibit "D."**
- 6.4. No increase in Fee will be due from CCDs and/or change orders generated during the construction period to the extent caused by Architect's error or omission.
- 6.5. The Architect's Fee set forth in this Agreement shall be full compensation for all of Architect's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 6.6. Regardless of the structure of Architect's Fee, the Architect's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.
- 6.7. Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for direct damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care under California law for architects performing similar work for California school districts in or around the same geographic area as the District.

Article 7. Payment for Extra Services or Changes

Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Service was authorized as indicated herein and that the Extra Services have been satisfactorily completed. If any service is done by Architect without prior written authorization by the Construction Manager or the District's authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, Architect will be paid by the District as described in **Exhibit "B"** for Extra Services that the Construction Manager or the District's authorized representative verbally

requests, provided that Architect confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Architect.

Article 8. Ownership of Data

- 8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 8.2. Architect retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 8.3. Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting Technology ("CADD") (e.g., AutoCAD). Architect shall deliver to District all drawings in DWG format. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 8.4. In order to document exactly what CADD information was given to the District, Architect and District shall each date and sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. The District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Architect or its Consultant(s) subsequent to it being given to the District.
- 8.5. Following the termination of this Agreement, for any reason whatsoever, Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service"), which the District shall have the right to utilize in any way permitted by statute:
 - 8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

- 8.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 8.5.3. One (1) set of non-fixed image CADD drawing files in DXF or DWG or both formats of the site plan, floor plans (architectural, plumbing, structural, mechanical and electrical), roof plan, sections and exterior elevations of the Project.
 - 8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.
 - 8.5.5. The obligation of Section 8.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.
- 8.6. In the event the District changes or uses any fully or partially completed documents without Architect's knowledge or participation or both, the District agrees to release Architect of responsibility for such changes, and shall hold Architect harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Architect is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify Architect and its Consultants.

Article 9. Termination of Contract

- 9.1. District's Request for Assurances: If District at any time reasonably believes that Architect is or may be in default under this Agreement, District may in its sole discretion notify Architect of this fact and request written assurances from Architect of performance of Services and a written plan from Architect to remedy any potential default under the terms this Agreement that the District may advise Architect of in writing. Architect shall, within ten (10) days of District's request, deliver a written cure plan that meets the requirements of the District's request for assurances. Architect's failure to provide such written assurances of performance and the required written plan, within ten (10) days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.
- 9.2. District's Termination of Architect for Cause: If Architect fails to perform Architect's duties to the satisfaction of the District, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms

or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice the District for all Services performed until the notice of termination, but the District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions. District may, at its discretion, provide the Architect time to cure its default or breach.

- 9.3. District's Termination of Architect for Convenience: District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination for convenience.
- 9.4. Architect's Termination of Agreement for Cause: Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Architect. Such termination shall be effective thirty (30) days after receipt of written notice from Architect to the District. Architect may invoice the District and the District shall pay all undisputed invoice(s) for Services performed until Architect's notice of termination.
- 9.5. Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.6. Ceasing Services upon Termination: If, at any time in the progress of the Design of the Project, the Governing Board of the District determines that the Project should be terminated, Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay Architect only the fee associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 9.7. Project Suspension: If the District suspends the Project for more than one hundred twenty (120) consecutive days, Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is

resumed, the schedule shall be adjusted and Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. Architect shall make every effort to maintain the same Project personnel after suspension. If the District suspends the Project for more than two (2) years, Architect may terminate this Agreement by giving written notice.

Article 10. Indemnity/Architect Liability

- 10.1. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and members ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim(s)") to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of the Architect, its directors, officers, employees, subcontractors, consultants, or agents, arising out or, connected with, or resulting from the performance of the Services, the Project, of this Agreement.. Architect, to the furthest extent permitted by California law, also has the duty to defend the Indemnified Parties from Claim(s) at Architect's own expense, including attorneys' fees and costs, however, in no event shall the cost to defend charged to the Architect exceed the Architect's proportionate percentage of fault. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. If a Claim arises out of, or relates in any way to the Services provided under this Agreement, upon the District's or the Architect's request, the District and the Architect agree to undertake good faith measures to allow the Architect to assist the District in resolving the dispute or litigation. The Architect's assistance, described as "Mandatory Assistance" in Exhibit A, Section B.8, shall be provided at Architect's own expense and excluded from any reimbursement calculation. At the commencement of the Mandatory Assistance Phase, District and Architect shall also negotiate in good faith as to the scope and extent of further assistance, including consideration of a joint defense agreement if appropriate. During the Mandatory Assistance Phase, each Party shall be responsible for their own attorneys' fees and costs incurred; however, each Party reserves its rights pursuant to Civil Code section 2782.8.
- 10.2. Architect shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim as defined in Article

10.1. These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

10.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. Fingerprinting

11.1. Pursuant to Education Code section 45125.2, the District has determined on the basis of scope of Services in this Agreement, that Architect, its Consultants and their employees will have only limited contact with pupils. Architect shall promptly notify the District in writing of any facts or circumstances which might reasonably lead the District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

11.2. For all workers on District property, the Architect shall comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, the Architect and Architect's personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders.

Article 12. Responsibilities of the District

12.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.

12.2. The District shall verbally or in writing advise Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.

12.3. The District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters, which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of

the Architect, the specifications shall include a note to the effect that the hazardous materials consultant's specifications are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the hazardous materials consultant's specifications related to asbestos and lead paint survey and/or abatement documentation to the preparer of the hazardous materials consultant's specifications.

- 12.4. The District shall timely provide to the Architect all relevant information in its possession regarding the Project that is necessary for performance of Architect's services.

Article 13. Liability of District

- 13.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 13.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees, even though such equipment be furnished or loaned to Architect by District.

Article 14. Nondiscrimination

Architect 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 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 Architect and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

Article 15. Insurance

- 15.1. Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit "E."**

15.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in **Exhibit "E."**

Article 16. Covenant against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. Entire Agreement/Modification

This Agreement, including the Exhibits attached hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 18. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void. If an assignment is approved, this Agreement shall be binding on the successors and assign of the parties.

Article 19. Law, Venue

19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

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

Article 20. Alternative Dispute Resolution

- 20.1. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 20.2. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Architect shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Architect's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Architect submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 20.3. Pending resolution of the dispute, Architect agrees it will neither rescind the Agreement nor stop the performance of the Services.

Article 21. Tolling of Claims

Architect agrees to toll all statutes of limitations for District's assertion of claims against Architect that arise out of, pertain to, or relate to Contractors' or subcontractors' claims against District involving Architect's work, until the Contractors' or subcontractors' claims are finally resolved.

Article 22. Attorneys' Fees

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of or performance under this Agreement, to terminate this Agreement, or to enforce, protect or establish any term or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including consultants' fees, attorneys' fees and costs for appeal, as

may be fixed by the court. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

Article 23. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 24. Employment Status

- 24.1. Architect shall, during the entire term of Agreement, be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which Architect performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 24.2. Architect understands and agrees that Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 24.3. Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect, or any employee or Consultant of Architect, is an employee of the District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.
- 24.4. Should a relevant taxing authority determine a liability for past services performed by Architect for the District, upon notification of such fact by the District, Architect shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to Architect

under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).

- 24.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect or its employees of Consultants was not an employee.
- 24.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 25. Certificate of Architect

- 25.1. Architect certifies that the Architect is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform.
- 25.2. Architect certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 25.3. Architect certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws, if applicable to Architect and its Consultants' professional services to be provided under this Agreement.

Article 26. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars (\$5,000).

Article 27. Notice & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
ATTN: Chris Ralston, Director III, Facilities
EMAIL: chris-ralston@scusd.edu

Architect:

Lionakis
2025 19th Street
Sacramento, CA 95818
ATTN: Laura Knauss, Principal
EMAIL:
laura.knauss@lionakis.com

With a Copy to:

Dannis Woliver Kelley
200 California Street #400
San Francisco, CA 94111
ATTN: Deidree Sakai, Esq.

Any notice personally given shall be effective upon receipt. Any notice sent by electronic mail shall be effective the day after transmission. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

Article 28. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (“DVBEs”) of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the “Act”). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount(s) intended to be paid to DVBEs in conjunction with the contract, and documentation demonstrating Architect’s good faith efforts to meet these goals.

Article 29. District’s Right to Audit

29.1. District retains the right to review and audit, and the reasonable right of access to Architect’s and any Consultant’s premises to review and audit the Architect’s compliance with the provisions of this Agreement (“District’s Right”). The District’s Right includes the right to inspect, photocopy, and to

retain copies, outside of Architect's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

- 29.2. The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 29.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 29.4. Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Architect shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Architect shall submit exact duplicates of originals of all requested records to the District.
- 29.5. Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 29.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

Article 30. Other Provisions

- 30.1. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 30.2. The individual executing this Agreement on behalf of Architect warrants and represents that she/he is authorized to execute this Agreement and bind the CM to all terms hereof.

- 30.3. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.
- 30.4. Architect shall issue a credit to the District as an offset to the Architect's Fee, an amount equal to fifty percent (50%) of the actual tax benefit derived by the Architect or its shareholders, after deducting associated tax consulting fees based on the Project per Internal Revenue Code section 179D (the Energy Efficient Commercial Buildings deduction).

Article 31. **Exhibits "A" through "H"** attached hereto are hereby incorporated by this reference and made a part of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.


SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

LIONAKIS

Date: _____, 20__

Date: May 18, 2022

By: _____

By:  _____

Title: Rose Ramos,
Chief Business and Operations Officer

Title: Laura Knauss,
Principal

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

TABLE OF CONTENTS

A.	SCOPE OF PROJECT	1
B.	BASIC SERVICES	1
C.	PRE-DESIGN AND START-UP SERVICES	4
D.	SCHEMATIC DESIGN PHASE	7
E.	DESIGN DEVELOPMENT PHASE	12
F.	CONSTRUCTION DOCUMENTS PHASE	16
G.	BIDDING PHASE	20
H.	CONSTRUCTION CONTRACT ADMINISTRATION PHASE	21
I.	CLOSE OUT PHASE	25
J.	MEETINGS / SITE VISITS / WORKSHOPS	Error! Bookmark not defined.

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

Architect shall provide all professional services necessary for completing the following:

SCOPE OF PROJECT

Project Name: Edward Kemble/Cesar Chavez Property – New School Project

Construction Cost Budget: \$65,000,000 (Construction budget)

BASIC SERVICES

Architect agrees to provide the Services described below:

1. Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Architect under the Agreement as well as coordination with all master plans, studies, reports and other information provided by District. Architect shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
2. Architect will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance. Architect shall advise the District of the most effective methods of identifying and securing such information as part of each stage of design. Architect shall track for District's benefit all such suggested and disclosed information.
3. The District shall provide all information available to it to the extent the information relates to Architect's scope of work. This information shall include, if available,
 - a. As-builts;
 - b. Physical characteristics;
 - c. Legal limitations and utility locations for the Project site(s);
 - d. Written legal description(s) of the Project site(s);
 - e. Grades and lines of streets, alleys, pavements, and adjoining property and structures;

- f. Adjacent drainage;
- g. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
- h. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
- i. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
- j. Surveys, reports, as-built drawings, record drawings; and
- k. Subsoil data, chemical data, and other data logs of borings.

Architect shall Visually Verify this information and all existing Project utilities, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District.

If Architect determines that the information or documentation the District provides is insufficient for purposes of design, or if Architect requires: a topographical survey; a geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, then, at the soonest possible time after Architect has become aware that this additional information is needed, the Architect shall request that the District acquire that information. If the Parties mutually agree in writing, this additional information and service shall be procured through the Architect, who may invoice the District for those services as Extra Services.

- 4. **Technology Backbone.** Architect shall be responsible for the coordination of the design and the layout of the technology backbone system with the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Architect and Consultant(s) shall prepare and be responsible for documents prepared by the Architect based on the information provided by the District's technology consultant as appropriate to the level of design completion.
- 5. **District Standards.** Architect shall incorporate into its work and the work of all Consultants the adopted District standards for facilities and construction.

High Performance Schools. If the District adheres to the Collaborative for High Performance School ("CHPS") Best Practice Standards, the Services provided by the Architect shall incorporate the CHPS Best Practice Standards and criteria to the extent feasible.

6. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Architect, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Architect's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

C. PRE-DESIGN AND START-UP SERVICES

1. Project Initiation

Upon final execution of the Agreement with the District, Architect shall:

- a. Within the first week following execution of the Agreement, review the proposed Schedule of Services set forth in **Exhibit "C"** to the Agreement and prepare a detailed scope of work list and work plan for documentation to the District's satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for review and approval by the District and by all regulatory agencies and additional definition of deliverables.
- b. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

2. Development of Architectural Program

Architect shall prepare for the District's review of an architectural program as follows:

- a. Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
- b. Review DSA codes pertaining to the proposed Project design.
- c. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- d. Based on survey and topography data provided by the District, input into computer and develop existing conditions base for the Schematic Design Phase.
- e. Administer Project as required to coordinate work with the District and among Consultants.

- f. Review District-provided standards for facilities and construction, including but not limited to designation of any material, product, thing or service by specific brand or trade name pursuant to Public Contract Code section 3400, subdivision (c).

3. **Construction Cost Budget**

- a. Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget within the parameters of the Construction Budget established by the District for the Project. The estimates forming the basis of the Construction Cost Budget are to be based on the developed functional architectural program as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Architect:
 - (i) All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be approved by the District and its representatives.
 - (ii) Format shall be estimated space use square foot costs (classroom sq. ft. costs, office space, etc.
 - (iii) Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.
 - (iv) Architect shall include all information and estimates from the District and/or the Construction Manager that are intended to be part of the Construction Cost Budget.
 - (v) One week prior to submittal of documents, Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
 - (vi) Mechanical, electrical, civil, landscape and estimating consultant(s) shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.
- b. The Construction Cost Budget will inform the District's Construction Budget for the Project. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.

4. **Presentation**

If requested, Architect, along with any involved consultant(s), shall present and review with the District and, if directed, with the District's Governing Board, the summary and detail of work involved in this Phase, including two-dimensional renderings of any proposed facility suitable for public presentation.

5. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District an electronic copy of the following items produced in this Phase:

- a. Architectural Program (include comparison between developed program and "model" program, include narrative explaining any substantial deviations);
- b. Site Plan;
- c. Revised Construction Cost Budget;
- d. Final Schedule of Services;
- e. Meeting Reports/Minutes from the Kick-off and other meetings; and
- f. Renderings, if requested by District.

6. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

D. SCHEMATIC DESIGN PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare for the District's review a Schematic Design Study, containing the following items as applicable to the Project scope, as follows:

1. Prepare and review with District staff a scope of work list and work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities of the Architect, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables.
2. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.
3. **Architectural**
 - a. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
 - b. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.
 - c. As applicable, identify proposed roof system, deck, insulation system, and drainage technique.
 - d. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.
 - e. Identify code requirements, include occupancy classification(s) and type of construction.
4. **Structural**
 - a. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists) with preliminary sizing identified.

- b. Identify foundation systems (including fill requirements, piles, caissons, spread footings) with preliminary sizing identified.

5. **Mechanical**

- a. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.
- b. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.
- c. Show selected system on drawings as follows:
 - (i) Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.
 - (ii) Location and preliminary sizing of all major equipment and duct work in allocated spaces.
 - (iii) Schematic piping.
 - (iv) Temperature control zoning.
- d. Provide design criteria to include the intent base of design for the Project.
- e. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

6. **Electrical**

- a. Calculate overall approximate electrical loads.
- b. Identify proposed electrical system for service, power, lighting, low voltage and communication loads, including proposed or planned additional buildings or other facilities on the Project site.
- c. Show system(s) selected on drawings as follows:
 - (i) Single line drawing(s) showing major distribution system.
 - (ii) Location and preliminary sizing of all major electrical systems and components including:

- (A) Load centers.
 - (B) Main panels.
 - (C) Switch gear.
- d. Provide design criteria to include the intent base of design for the Project.
 - e. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

7. **Civil**

- a. Develop on and off site utility systems such as sewer, water, storm drain, firewater lines and fire hydrants.
- b. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades and drainage.
- c. Coordinate finish floor elevations with architectural site plan.

8. **Specifications**

Prepare outline specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Architect is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications. Architect shall review and comment on District's construction bid contracts and contract documents (the "Division 0" and "Division 1" documents) as part of its Services under the Agreement.

9. **Construction Cost Budget**

Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding Phase, the following conditions apply to the revised Construction Cost Budget:

- a. Schematic Estimates: This estimate consists of unit cost applied to the major items and quantities of work. The unit cost shall reflect the complete direct current cost of work. Complete cost includes labor, material, waste allowance, sales tax and subcontractor's mark-up.
 - (i) General conditions shall be applied separately. This estimate shall be prepared by specification section and summarized by the CSI categories.

- b. The estimate shall separate the Project's building cost from site and utilities cost. Architect shall submit to the District the cost estimating format for prior review and approval.
- c. Escalation: all estimates shall be priced out at current market conditions. The estimates shall incorporate all adjustments as appropriate, relating to mid-point construction, contingency, and cost index (i.e. Lee Saylor Index).
- d. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
- e. Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
- f. At the end of this Phase, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.

10. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this phase, together with one (1) copy of each item in electronic format:

- a. Breakdown of Construction Cost Budget as prepared for this Phase;
- b. Meeting reports/minutes;
- c. Schematic Design Package with alternatives;
- d. Statement indicating changes made to the Architectural Program and Schedule;
and
- e. Copy of the DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

11. Presentation

- a. Architect shall present and review with the District the detailed Schematic Design.

- b. The Schematic Design shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.

12. **Meetings**

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

E. DESIGN DEVELOPMENT PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare from the accepted deliverables from the Schematic Design Phase, the Design Development Phase documents consisting of the following for each proposed system within Architect's scope of services:

1. Architectural

- a. Scaled, dimensioned floor plans with final room locations including all openings.
- b. 1/8" scale building sections showing dimensional relationships, materials and component relationships.
- c. Exterior elevations of all proposed new buildings, existing buildings to be renovated and all architectural elements of the Project.
- d. Identification of all fixed equipment to be installed in Project.
- e. Interior finishes identified and located within the rooms of all buildings.
- f. Site plan completely drawn with beginning notes and dimensions including grading and paving.
- g. Preliminary development of details and large scale blow-ups.
- h. Legend showing all symbols used on drawings.
- i. Floor plans identifying all fixed and major movable equipment and furniture.
- j. Further refinement of Outline Specifications for architectural, structural, mechanical, electrical, civil and landscape manuals, systems and equipment.
- k. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:
 - (i) Light fixtures.
 - (ii) Ceiling registers or diffusers.
 - (iii) Access Panels.

2. **Structural**

- a. Structural drawings with all major members located and sized.
- b. Establish final building and floor elevations.
- c. Preliminary specifications.
- d. Preliminary calculations for the structural systems including lateral force resistive systems, foundations, and all structural system components.
- e. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center.

3. **Mechanical**

- a. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- b. Major mechanical equipment should be scheduled indicating size and capacity.
- c. Ductwork and piping should be substantially located and sized.
- d. Plumbing plans for the Project shall indicate numbers and locations of fixtures and be in conformance with the code-mandated fixture count requirements of the Project.
- e. Devices in ceiling should be located.
- f. Legend showing all symbols used on drawings.
- g. More developed Outline Specifications indicating quality level and manufacture.
- h. Control Systems identified.
- i. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

4. **Electrical**

- a. All lighting fixtures should be located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.
- b. All major electrical equipment should be scheduled indicating size and capacity.

- c. Complete electrical distribution including a one-line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers and emergency generators, if required. Low-voltage system includes fire alarm system, security system, clock and public address system, bell system, voice-data system, and telecom/technology system.
- d. Legend showing all symbols used on drawings.
- e. More developed and detailed Outline Specifications indicating quality level and manufacture.
- f. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

5. Civil

- a. Further refinement of Schematic Design Phase development of on and off site utility systems for sewer, electrical, water, storm drain and fire water. Includes, without limitation, pipe sizes, materials, invert elevation location and installation details.
- b. Further refinement of Schematic Design Phase roadways, walkways, parking and storm drainage improvements. Includes details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.

6. Bid Documents

Architect shall review and comment on District's construction bid contracts and contract documents (the "Division 0" documents and "Division 1" documents) as part of its Services under the Agreement.

7. Construction Cost Budget

- a. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the Agreement and the preceding Phases, the following conditions apply to the revised Construction Cost Budget:
 - (i) Design Development Estimate: This further revised estimate shall be prepared by specification section, summarized by CSI category and divided by trade and work item. The estimate shall include individual item unit costs of materials, labor and equipment. Sales tax, Contractor's mark-ups, and general conditions shall be listed separately.

- (ii) The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
 - (iii) At this stage of the design, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.
- b. Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

8. Deliverables and Numbers of Copies

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one (1) copy of each item in electronic format:

- a. Design Development drawing set from all professional disciplines necessary to deliver the Project;
- b. Specifications;
- c. Revised Construction Cost Budget; and
- d. Copy of the DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.

9. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

F. CONSTRUCTION DOCUMENTS PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Architect's scope of work. All Projects subject to DSA's jurisdiction shall be submitted for review, back check, and approval, under the electronic plan review process ("EPR process"), rather than paper submission.

1. Construction Documents – 100% / Completion Stage:

a. Architectural

- (i) Completed site plan.
- (ii) Completed floor plans, elevations, and sections.
- (iii) Architectural details and large blow-ups completed.
- (iv) Finish, door, and hardware schedules completed, including all details.
- (v) Site utility plans completed.
- (vi) Fixed equipment details and identification completed.
- (vii) Reflected ceiling plans completed.

b. Structural

- (i) Structural floor plans and sections with detailing completed.
- (ii) Structural calculations completed.

c. Mechanical

- (i) Large scale mechanical details complete.
- (ii) Mechanical schedules for equipment completed.
- (iii) Completed electrical schematic for environmental cooling and exhaust equipment.
- (iv) Complete energy conservation calculations and report.

d. **Electrical**

- (i) Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
- (ii) Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.
- (iii) All electrical equipment schedules completed.
- (iv) Special system components plans completed.
- (v) Electrical load calculations completed.

e. **Civil**

All site plans, site utilities, parking and roadway systems completed.

f. **Construction Cost Budget**

- (i) Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the fifty percent (50%) Construction Documents Phase revisions to the Construction Cost Budget.
- (ii) The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
- (iii) Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
- (iv) At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.

g. **Specifications**

- (i) Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

- (ii) No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:
 - (A) The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code section 3400, or
 - (B) The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code section 3400.
- (iii) Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by the District and only with District's prior approval.
- (iv) At one hundred percent (100%) review, District shall review the Specifications and shall direct Architect to make corrections at no cost to the District.
- (v) Coordination of the Specifications with specifications developed by other disciplines.
- (vi) Specifications shall be in CSI format.

h. Constructability Review

The District and/or its designee, at its sole discretion, shall have the right to conduct a constructability review of the Construction Documents. A report shall be given to the Architect who shall make necessary changes along with providing written comments for each item listed in the report. Conducting a constructability review does not excuse the Architect's obligation to provide Services that shall comply with professional architectural standards, including the standard of care applicable to architects designing public school facilities and applicable requirements of federal, state, and local law.

i. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- (i) Working drawings;
- (ii) Specifications;
- (iii) Engineering calculations;

- (iv) Construction Cost Budgets;
- (v) Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;
- (vi) Copy of DSA file including all correspondence, meeting, minutes or reports, back-check comments, checklists to date; and
- (vii) Statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

2. Construction Documents Final Back-Check Stage:

- a. The Construction Documents final back-check stage shall be for the purpose of the Architect incorporating all regulatory agencies' comments into the drawings, specifications, and estimate. All changes made by the Architect during this stage shall be at no additional cost to the District.
- b. The final contract documents delivered to the District upon completion of the Architect's work shall be the Bid Set and shall consist of the following:
 - (i) Specifications: Original word-processed technical specifications on reproducible masters in CSI format.
- c. Architect shall update and refine the Consultants' completed Contract Documents.
- d. Conclusion of Construction Document Phase requires final stamp-out by DSA.

3. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a monthly basis.

G. BIDDING PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall perform Bidding Phase services for District as follows:

1. Contact potential bidders and encourage their participation in the Project.
2. Coordinate the development of the bidding procedures and the construction Contract Documents with the District.
3. The development of the bidding procedures and the construction Contract Documents shall be the joint responsibility of the District and Architect. Nevertheless, Architect will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance.
4. While the Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through Architect.
5. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Architect for decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Architect and issued by the District.
6. Attend bid opening.
7. Coordinate with Architect Consultants.
8. Respond to District and potential bidder questions and clarifications.
9. Deliverables and Number of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- a. Meeting report/minutes from the kick-off meeting;
- b. Meeting report/minutes from the pre-bid site walk; and
- c. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far. Architect shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a Conforming Set.

H. CONSTRUCTION CONTRACT ADMINISTRATION PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall perform Construction Contract Administration Phase services for the District as follows:

1. Architect's responsibility to provide basic services for the Construction Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon the District's terminating the Agreement, whichever is earlier.
2. **Construction Oversight and Project Certification Process**
 - a. Architect shall ensure that the Project Inspector is approved by the DSA for the Project by submitting the applicable Inspector's Qualification Record (form DSA 5 or more current version) to and by obtaining approval from the DSA prior to commencement of construction and prior to requesting issuance of project inspections cards (form DSA 152 or more current version).
 - b. Architect shall request issuance of the proper number of project inspection cards (forms DSA 152 or more current version) by electronically submitting form DSA 102-IC (or more current version) to the DSA after the construction contract has been awarded. Architect shall provide project inspection cards to the Project Inspector prior to commencement of construction.
 - c. Prior to commencement of construction, Architect shall provide (1) a copy of the DSA approved construction documents and (2) the DSA approved Statement of Structural Tests and Special Inspections (form DSA 103 or more current version) prepared by Architect to the Project Inspector and Laboratory of Record.
 - d. Architect shall prepare and submit a Contract Information form (form DSA 102 or more current version) for all construction contracts.
 - e. Architect shall maintain such personal contact with the Project as is necessary to assure themselves of compliance, in every material respect, with the DSA-approved construction documents. Personal contact shall include visits to the Project site by the Architect or engineer or their qualified representative to observe construction.
 - f. Architect shall notify DSA as to the disposition of materials noted on laboratory testing, and/or special inspection, reports as not conforming to the DSA-approved construction documents.
 - g. Architect shall respond to DSA field trip notes as necessary.

- h. Architect shall submit an interim Verified Report (form DSA 6-AE or more current version) to the DSA electronically and a copy to the Project Inspector for each of the applicable nine (9) sections of form DSA 152 prior to the Project Inspector signing off that section of the project inspection card.
- i. Architect shall submit a Statement of Final Actual Project Cost (form DSA 168 or more current version) to the DSA.
- j. Architect shall submit Verified Reports (form DSA 6-AE or more current form) to the DSA and to the Project Inspector if any of the following events occur: (1) when construction is sufficiently complete in accordance with the DSA-approved construction documents so that the District can occupy or utilize the Project; (2) work on the Project is suspended for a period of more than one month; (3) the services of the Architect are terminated for any reason prior to completion of the Project; or (4) DSA requests a Verified Report.

3. Change Orders

- a. Architect shall review all of Contractor's change order requests to determine if those requests are valid and appropriate. Architect shall provide a recommendation to District as to whether the change should be approved, partially approved, returned to the Contractor for clarification, or rejected.
- b. Architect shall furnish all necessary Construction Change Documents and additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District shall request these Construction Change Documents and drawings from the Architect, which shall be provided at no additional cost unless designated as Extra Services by the District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.

4. Submittals

- a. Architect shall review and approve or take other appropriate action upon Contractor's submittals such as: shop drawings, Project data, samples and Construction Change Documents, but only for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- b. Architect shall review Contractor's schedule of submittals and advise the District on whether that schedule is complete. Architect shall provide the District with proposed revisions to this schedule and advise the District on whether the District should approve this schedule.

- c. Architect's action upon Contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of Contractor(s), while allowing sufficient time in the Architect's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed twenty-one (21) calendar days from its receipt by the Architect. Architect's response to each submittal shall be a substantive and acceptable response. This twenty-one (21)-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce Architect's liability if it fails to prepare acceptable documents.
5. **RFIs.** During the course of construction as part of the basic services, Architect must respond to all Requests for Information ("RFI") as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed seven (7) calendar days from receipt by the Architect. Architect's response to each RFI shall be a substantive and acceptable response. This seven-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect's liability if it fails to prepare acceptable documents. Architect must verify that RFIs are passed through the Project Inspector, if any.
6. **Notices of Deficient Work.** On the basis of on-site observations, Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Architect shall timely notify the District in writing of any defects or deficiencies in the work by any of the District's Contractors that Architect may observe. However, Architect shall not be a guarantor of the Contractor's performance.
7. **As-Built Drawings.** Architect shall review and evaluate for District the Contractor(s)' documentation of the actual construction performed during the Project that the Contractor(s) should prepare and submit as As-Builts. As-Builts are documents that show the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor(s) on a Conforming Set.
8. **Record Drawings.** Architect shall incorporate all information on all As-Builts, sketches, details, and clarifications, and prepare one (1) set of final Record Drawings for the District. The Record Drawings shall incorporate onto one (1) set of drawings, all changes from all As-Builts, sketches, details, and clarifications, including, without limitation, all requests for information, Construction Change Documents and change orders based upon the construction Contractor's representations of actual construction. Architect shall deliver the Record Drawings to the District at completion of the construction in a format acceptable to the District, and it shall be a condition precedent to the District's approval

of Architect's final payment. Architect may insert the following notice on the Record Drawings:

These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Architect has provided a review consistent with its legal standard of care.

9. **O&M Manuals and Warranties.** Architect shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.
10. **Start-up.** Architect shall also provide, at the District's request, architectural/engineering advice to the District on start-up, break-in, and debugging of facility systems and equipment, and on apparent deficiencies or defects in construction following the acceptance of the Contractor's work.
11. **Payment Statements.** Recommendations of Payment by Architect constitute Architect's representation to the District that work has progressed to the point indicated to the best of Architect's knowledge, information, and belief, and that the quality of the work is in general conformance with the Contract Documents.

12. **Deliverables and Number of Copies**

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- a. Meeting report/minutes from the kick-off meeting;
- b. Observation reports; and
- c. Weekly meeting reports.

13. **Meetings**

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

I. CLOSE OUT PHASE

1. As the Construction Administration Phase progresses, Architect shall perform the following Close Out Phase services for the District as required in a timely manner:
 - a. Architect shall review the Project and observe the construction as required to determine when the Contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.
 - b. Architect shall collect from the Contractor, review, and forward to the District all written warranties, operation manuals, and spare parts with Architect's recommendation as to the adequacy of these items.
 - c. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
 - d. Architect shall respond to the DSA "90-day" letter.
 - e. Architect shall obtain all required DSA approval of all Construction Change Documents and addenda to the Contractor's contract.
 - f. Architect shall prepare a set of As-Built Drawings for the Project, as required by the District.
 - g. Architect shall review and prepare a package of all warranty and O&M documentation.
 - h. Architect shall organize electronic files, plans and prepare a Project binder.
 - i. Architect shall have primary responsibility to coordinate all Services required to close-out the design and construction of the Project with the District and among Consultants.
2. When the design and construction of the Project is complete, the District shall prepare and record with the County Recorder a Notice of Completion for the Project.
3. **Deliverables and Number of Copies**
 - a. Punch list; and
 - b. Upon completion of the Project, all related Project documents, including As-Builts and Record Drawings. These are the sole property of the District.

4. Meetings

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as needed.

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to the Agreement shall be performed by Architect if needed and if authorized or requested by the District:

- A. Providing services as directed by the District that are not part of the Basic Services of this Agreement, or otherwise included within **Exhibit "A."**
- B. Providing deliverables or other items in excess of the number indicated in **Exhibit "A."** Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit "A,"** so that the District can procure the additional deliverables itself or direct Architect to procure the deliverables at the District's expense or on the District's account at a specific vendor.
- C. Making revisions in drawings, specifications, or other documents when such revisions are required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set.
- D. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
- E. Providing services made necessary by the default of Contractor(s).
- F. In the absence of a final Certificate of Payment or Notice of Completion, providing services more than ninety (90) days after the date of completion of work by Contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.
- G. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
- H. The following rates, which include overhead, administrative cost, and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

Job Title	Hourly Rate
Principal In Charge:	\$255
Associate Principal:	\$240
Project Manager:	\$200
Designer:	\$130 - \$150
Assistant Project Manager:	\$190
Intern Architect:	\$165 - \$190
Contract Administrator:	
Other	
Other	

- I. The mark-up on any approved reimbursable item of Extra Services shall not exceed five percent (5%).
 - 1. The following items are approved for mark-up:
 - a. Sub-consultant Invoices.
 - 2. Any approved item of Extra Services not identified in the above list may not be marked-up.

J. **Format and Content of Invoices** (Extra Services Only)

Architect acknowledges that the District requires Architect’s invoices to include detailed explanations of the Services performed. For example, a six hour charge for “RFIs and CORs” is unacceptable and will not be payable. A more detailed explanation, with specificity, is required. This includes a separate entry for each RFI, PCO, CCD and change order. For example, the following descriptions, in addition to complying with all other terms of this Agreement, would be payable. The times indicated below are just placeholders:

Review RFI 23; review plans and specifications for response to same; prepare responses to same and forward to contractor, district, construction manager, and project inspector.	0.8 hours
Review COR 8; review scope of same and plans and specifications for appropriateness of same; prepare draft change order and language for same.	0.7 hours
Review COR 11; review scope of same and plans and specifications for appropriateness of same; prepare rejection of COR 11 for review by district, CM, IOR.	1.2 hours

END OF EXHIBIT

EXHIBIT "C"

SCHEDULE OF SERVICES

- A. Promptly after the execution of this Agreement, Architect shall prepare and submit for approval to the District a Schedule of Services showing the order in which Architect proposes to carry out Architect's Services ("Schedule of Services"). The Schedule of Services shall apply to the completion of all Services listed hereunder within the times established by this Agreement. The Schedule of Services shall be in the form of a progress chart clearly delineating all important increments and review dates. Architect shall update the Schedule of Services on a monthly basis and deliver two (2) hard copies and one (1) electronic copy to the District along with the monthly billing.
- B. Architect shall complete Services required under the Development of Architectural Program section within approximately 90 **calendar days** after written authorization from the District to proceed. (May 1 – August 1, 2022)
- C. Architect shall complete Services required under the Schematic Design Phase within **90 calendar days** after written authorization from District to proceed. (August 1 – November 1, 2022)
- D. Architect shall complete Services required under the Design Development Phase within approximately 90 **calendar days** after receipt of a written authorization from District to proceed. (November 1, 2022 – February 1, 2023)
- E. Architect shall complete Services required under Construction Documents Phase within **180 calendar days (6 months)** after written authorization from District to proceed, and as more specifically indicated below. Excluded from this duration is the time associated with DSA review the Construction Documents back-check stage.
 - 1. 100% Submittal Package Increment 1 **60 calendar days**
(February 1, 2023 – April 1, 2023)
 - 2. 100% Submittal Package Increment 2 **120 calendar days**
(February 1, 2023 – August 1, 2023)
 - 3. Final Contract Documents after Final Back-Check Stage Anticipated approval dates: Increment 1 approval – June 2023; Increment 2 approval – February 2024
- F. The durations stated above include the review periods of 10 **calendar days** required by the District.
- G. All times to complete tasks set forth in this Exhibit are of the essence, as indicated in the Agreement. If delays in the Schedule of Services are incurred as a result of the District's inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Services if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, those extensions shall be authorized in writing by the District.

END OF EXHIBIT

EXHIBIT "D"

PAYMENT SCHEDULE

A. Compensation

1. The payment of consideration to Architect as provided herein shall be full compensation for all of Architect's Services incurred in the performance hereof, including, printing and shipping of deliverables in the quantities set forth in **Exhibit "A,"** Except as expressly set forth in the Agreement and **Exhibit "B,"** there shall be no payment for extra costs or expenses.
2. The total compensation to Architect shall be as stated in Article 6 of the Agreement.
3. District shall pay Architect as follows for all Services contracted for under this Agreement:

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design/Architectural Program Development Phase	<u>2.5%</u>
Schematic Design Phase	<u>10%</u>
Design Development Phase	<u>15%</u>
Construction Documents Phase-Submittal to DSA	<u>27.5%</u>
Approval by DSA	10%
Bidding Phase	<u>2%</u>
Construction Contract Administration Phase	<u>23%</u>
Close Out Phase	<u>10%</u>
Generate Punch List	2%
Sign Off On Punch List	2%
Receive and Review All M & O Documents	2%
Filing All DSA Required Close Out Documents	2%
Receiving DSA Close Out, including DSA approval of the final set of Record Drawings	2%
TOTAL BASE COMPENSATION	<u>100%</u>

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and will be billed at a multiple of 1.10% the expenses incurred. These charges include, but are not limited to, expenses incurred which are directly related to the Project, such as reproductions, plans and plots for owner, agency or contractor's use, standard form documents, postage, handling and delivery of Instruments of Service, and mileage. Reimbursable expenses are not expected to exceed \$10,000.

B. Method of Payment

1. Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.
2. Architect shall submit to District on a monthly basis documentation showing proof that payments were made to its Consultant(s).
3. Architect shall submit to the District for approval a copy of the Architect's monthly pay request format.
4. Upon receipt and approval of Architect's invoices, the District agrees to make payments of undisputed amounts within thirty (30) days of receipt of the invoice as follows:

a. Pre- Design/Architectural Program Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Pre-Design/Architectural Program.

b. For Schematic Design Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Schematic Design Phase by the District.

c. For Design Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Design Development Phase by the District.

d. For Construction Documents Phase:

Monthly payments for percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Construction Documents Phase by the District.

e. For Bidding Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon the District's award of the bid.

f. For Construction Contract Administration Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon the District's notice of completion.

g. For Close Out:

Lump sum payment no sooner than thirty-five (35) days and no later than forty-five (45) days after completion of all items in this Phase.

END OF EXHIBIT

EXHIBIT "E"

INSURANCE REQUIREMENTS

- A. Architect shall procure, prior to commencement of the Services of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Architect, his agents, representatives, employees and Consultant(s). Architect's liabilities, including but not limited to Architect's indemnity or defense obligations, under this Agreement shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District as a material breach of contract.
- B. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits. Umbrella or Excess Liability policies are acceptable where the need for higher liability limits is noted and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and other liability coverage (except Professional Liability) designated under this Section B – Insurance Requirements." Minimum Scope of Insurance:
1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. **Commercial Automobile Liability.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 3. **Workers' Compensation Liability.** For all of the Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Architect shall keep in full force and effect, a Workers' Compensation policy.
 4. **Employers' Liability.** For all of the Architect's employees who are subject to this Agreement, Architect shall keep in full force and effect, an Employment Practices Liability policy with minimum liability coverage of two million dollars (\$2,000,000) per occurrence.
 5. **Professional Liability.** This insurance shall cover the prime design professional and his/her consultant(s) on a Claims Made basis for two Million Dollars (\$2,000,000) aggregate limit subject to no more than two hundred thousand dollars (\$200,000) per claim deductible, coverage to continue through completion of construction plus two (2) years thereafter.

- C. District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- D. **Deductibles and Self-Insured Retention:** Architect shall inform the District in writing if any deductibles or self-insured retention exceeds two hundred thousand dollars (\$200,000). At the option of the District, either:
1. The District can accept the higher deductible;
 2. Architect's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or
- E. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; Instruments of Service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
 2. For any claims related to the projects, Architect's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Architect's insurance and shall not contribute with it.
 3. Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 4. Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
 6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
 7. Architect shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Architect fails to

maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Architect under the Agreement.

8. Architect shall require all subconsultants to maintain the level of insurance Architect deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. Architect shall cause the subconsultants to furnish proof thereof to District within ten (10) days of District's request. Should Architect not require subconsultants to provide the same level of insurance as is required of Architect, as provided in this Agreement, Architect is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
- F. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A: VII. Architect shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A: VII. At the option of the District, the District may either:
1. Accept the lower rating; or
 2. Require Architect to procure insurance from another insurer.
- G. **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, Architect shall furnish District with:
1. Certificates of insurance showing maintenance of the required insurance coverages; and
 2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverages on its behalf. All endorsements are to be received and approved by the District before Services commence.
- H. **Copy of Insurance Policy(ies):** Upon the District's request, Architect will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

END OF EXHIBIT

EXHIBIT "G"

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Sections 2202-2208)

PROJECT/CONTRACT NO.: _____ between the Sacramento City Unified School District ("District") and Lionakis ("Consultant") ("Contract" or "Project").

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 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.** 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.** 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 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.

<i>Vendor Name/Financial Institution (Printed)</i> Lionakis	<i>Federal ID Number (or n/a)</i> 68-0397596
<i>By (Authorized Signature)</i> 	
<i>Printed Name and Title of Person Signing</i> Laura Krauss, Principal	<i>Date Executed</i> May 18, 2022

END OF DOCUMENT

EXHIBIT "H"

VACCINATION STATUS CERTIFICATION (Consultant)

Consultant/Company Name: Lionakis

Pursuant to the provision of the State Public Health Office Order issued on August 11, 2021 (Order of the State Public Health Officer Vaccine Verification for Workers in Schools) individuals that are working on school district property are required to be fully vaccinated and provide proof of vaccination or must be tested once weekly with either PCR testing or antigen testing.

A person is considered fully vaccinated for COVID-19: two weeks (14 days) or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson). Unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

Consultant currently has a contract with District under which Consultant provides services and accesses District property in the course and scope of performing its contract.

By signing below, Consultant hereby certifies that its employees/staff, whether paid or unpaid, and subconsultants, who will access any District location are either fully vaccinated and have provided Consultant with proof of vaccination from a permitted source or such employees/staff and subconsultants will comply with weekly testing requirements as outlined in the State Public Health Officer Order prior to entering District property on and after October 15, 2021.

Records of vaccination verification and testing results will be made available upon District's request or that of the County Health Officer for purposes of case investigation.

In addition, Consultant shall, while accessing District sites, remain in compliance with all current District policies and procedures associated with COVID-19 safety. The Consultant agrees to strictly, and without exception, follow all local, state, and federal guidelines regarding human protection from COVID-19 (the "Guidelines") while accessing District sites. The Guidelines to strictly follow are located at various sites, including, but not limited to:

- a) <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- b) <https://covid19.ca.gov/>
- c) <https://www.smchealth.org/>

I acknowledge that this certification, upon receipt and acceptance by the District, hereby supplements and amends and is hereby incorporated by reference into Consultant's existing contract with the District, that continued compliance with the matters described herein is a condition for continuation of that contract and that failure to adhere to these requirements constitutes a breach of contract resulting in consequences including, without limitation, contract termination. I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Consultant to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Executed this _____ day of May, 2022 at Sacramento California.

By: Kellie Schneider Signature: Kellie Schneider

Digitally signed by Kellie Schneider
DN: c=US,
E=kellie.schneider@konakis.com,
O=Lonakis, CU=Human Resources,
OU=Kellie Schneider,
Date: 2022.05.21 12:05:28-07'00'

Title: Director of Human Resources

Please submit this completed/signed certification by email to _____, at _____, with the executed Agreement.

Services may be suspended if this certification is not returned prior to performing services within the scope of this Agreement on District property.

END OF EXHIBIT



Agreement for Construction Management Services

between

Sacramento City Unified School District

and

Kitchell/CEM, Inc.

Cesar Chavez / Edward Kemble

New Construction Project

Dated: June 9, 2022

TABLE OF CONTENTS

ARTICLE 1.	Definitions.....	1
ARTICLE 2.	Term	3
ARTICLE 3.	Scope, Responsibilities and Services of CM	3
ARTICLE 4.	CM Staff	4
ARTICLE 5.	Schedule of Work.....	6
ARTICLE 6.	Construction Cost Budget	6
ARTICLE 7.	Fee and Method of Payment for Basic Services.....	7
ARTICLE 8.	Payment for Extra Services	8
ARTICLE 9.	Ownership of Data.....	8
ARTICLE 10.	Termination of Contract	9
ARTICLE 11.	Indemnity	10
ARTICLE 12.	Conduct on Project Site and Fingerprinting	10
ARTICLE 13.	Responsibilities of the District	11
ARTICLE 14.	Liability of District.....	12
ARTICLE 15.	Insurance	12
ARTICLE 16.	Nondiscrimination	16
ARTICLE 17.	Covenant Against Contingent Fees	16
ARTICLE 18.	Entire Agreement/Modification	16
ARTICLE 19.	Non-Assignment of Agreement.....	16
ARTICLE 20.	Law, Venue.....	16
ARTICLE 21.	Alternative Dispute Resolution	17
ARTICLE 22.	[RESERVED].....	17
ARTICLE 23.	Severability	17
ARTICLE 24.	Employment Status	17
ARTICLE 25.	Warranty of CM	18
ARTICLE 26.	Cost Disclosure - Documents and Written Reports	19

ARTICLE 27.	Communications / Notice.....	19
ARTICLE 28.	[RESERVED].....	19
ARTICLE 29.	District’s Right to Audit	19
ARTICLE 30.	Other Provisions	20
ARTICLE 31.	Exhibits.....	21

EXHIBITS “A” – “F”

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This Agreement for Construction Management Services ("Agreement") is made as of June 9, 2022, between the Sacramento City Unified School District, a California public school district ("District"), and Kitchell/CEM, Inc. ("CM") (both collectively "Parties"), for the following project ("Project"):

New school design and construction on the property of Edward Kemble/Cesar Chavez.

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

ARTICLE 1. Definitions

- 1.1 In addition to the definitions above, the following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1 **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2 **Architect:** The architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s).
 - 1.1.3 **As-Built Drawings ("As-Built"):** Any document prepared and submitted by District Contractor that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor on a Conforming Set.
 - 1.1.4 **Board:** The District's Governing Board.
 - 1.1.5 **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase.
 - 1.1.6 **Construction Budget:** The total amount indicated by the District for the Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.7 **Construction Change Documents ("CCD"):** The documentation of changes to the DSA-approved construction documents.
 - 1.1.8 **Construction Cost Budget:** The total cost to District of all elements of a Project designed or specified by the Architect, as adjusted during and at the end of the design phase in accordance with this Agreement and the Agreement for Architectural Services. The Construction Cost Budget does not include the compensation of the Project Design Team, the Program Manager, the CM and any subconsultants, the cost of the land, rights-of-way, or financing which are the responsibility of the District.

- 1.1.9 **Construction Manager:** The entity listed in the first paragraph of this Agreement.
- 1.1.10 **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the CM.
- 1.1.11 **Contractor:** One or more licensed and registered contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.12 **Design Team:** The Architect(s) that the District designates as being the architect(s) for all or a portion of the Project, including all consultants to the Architect(s), plus all engineer(s) or other designer(s), who have a responsibility to the District to design all or a portion of the Project either directly or as a subconsultant or subcontractor. The term Design Team includes the Design Professional in General Responsible Charge on this Project.
- 1.1.13 **DIR:** California Department of Industrial Relations.
- 1.1.14 **District:** The Sacramento City Unified School District.
- 1.1.15 **District's Representative:** The individual identified herein that is authorized to act on the District's behalf with respect to the Project. The initial District's Representative shall be Chris Ralston, Director of Facilities. District may change the District's Representative by notice as set forth herein.
- 1.1.16 **DSA:** Division of the State Architect in the California Department of General Services.
- 1.1.17 **Extra Services:** District-authorized Services outside of the scope in **Exhibit "A"** or District-authorized reimbursables not included in CM's fee.
- 1.1.18 **Fee:** The CM's Fee is defined in Article 7 and payable as set forth in **Exhibit "D."**
- 1.1.19 **Program Manager:** Any program manager hired to perform program management services for the District, including all Consultant(s) to the Program Manager.
- 1.1.20 **Project Inspector, Inspector of Record, IOR:** The agent of the DSA at the project site whose primary responsibility will be to insure that the project is constructed in compliance with current codes; DSA-approved plans and specifications relating to fire life safety, structure, and accessibility; and quality controls required of a public works facility. The IOR will report to both the DSA and the Architect.

- 1.1.21 **Record Drawings:** A final set of drawings prepared by the Architect incorporating all changes from all As-Builts, sketches, details, and clarifications.
- 1.1.22 **Service(s):** All labor, materials, supervision, services, tasks, and work that the CM is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.

ARTICLE 2. Term

- 2.1 **Term:** This Agreement shall become effective upon final execution, and, except as otherwise provided herein, will continue in effect until December 31, 2025.

ARTICLE 3. Scope, Responsibilities and Services of CM

- 3.1 **Scope:** CM shall provide the Services described herein and under **Exhibit "A"** for the Project.
- 3.2 **Standard of Care:** CM, its officers, agents, employees, subcontractors, Consultants and any persons or entities for whom CM is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. The District's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that CM has complied, nor in any way relieve the CM of compliance, with (i) the applicable standard of care, or (ii) applicable statutes, regulations, rules, guidelines and requirements.
- 3.3 **Coordination:** In the performance of CM's services under this Agreement, CM agrees that it will maintain coordination with District-designated representatives as may be requested and desirable. This shall include, without limitation, coordination with all members of the District's Design Team, the Project Inspector, and the Program Manager.
- 3.4 **Other Consultants:** If the CM employs sub-consultant(s), the CM shall ensure that its contract(s) with its sub-consultant(s) include language incorporating the terms of this Agreement.
- 3.5 **CM's as District Representative:** CM will act as the District's agent to render the Services and furnish the work as described in **Exhibit "A,"** commencing with the receipt of a written Notice to Proceed signed by the District Representative. CM's services will be completed in accordance with the schedule attached as **Exhibit "C."** During the Project's Construction Phase, the District may require that the Contractors submit all notices and communication relating to the Project directly to the CM.
- 3.6 **Review of General Obligation Bond Program Report and District's Facilities Master Plan:** CM will review the District's Facilities Master Plan for

the District and other written materials the District makes available by the District to CM to understand fully the nature, extent and intent of the Facilities Plan and the Project.

- 3.7 **Review of Measure H:** CM will review Measure H and other written materials made available by the District to CM that relate to Measure H to fully understand the extent of funding available to implement the District's Master Facilities Plan for the District, the anticipated schedule for issuance of Bonds under Measure H relative to the anticipated design, bidding and construction of projects.
- 3.8 **Expansion of Work based on Additional Funds:** Should the Board decide to expand the scope of the Project and/or supplement the Construction Budget based upon availability of additional funds, Construction Manager agrees to perform the additional scope of work under the fee and cost terms of this Agreement.
- 3.9 **Conflicts of Interest Prohibited:**
- 3.9.1 CM understands that District officials and employees are prohibited from involvement in decisions in which they may have a financial interest pursuant to Government Code sections 1090 and 87100 et seq., and certifies that it does not know of any facts indicating that any District official or employee has an ownership or other financial interest, direct or indirect, in this Agreement. Further, CM hereby certifies that no current District official or employee of the District, and no one who has been a District official or employee of the District within the past two years has participated in bidding, selling or promoting this Agreement. CM understands that in addition to the remedies available at law, that any failure to provide an accurate certification or any violation of this provision shall make the Agreement voidable by District.
- 3.9.2 CM shall not be permitted to submit proposals or otherwise seek contracts for the following services to be procured by the District in connection with any project covered by this Agreement: Design Professional, IORs or Test/Inspection. If CM identifies potential Design Professionals, Project Inspectors or Test/Inspection services in connection with a project, CM shall affirmatively and unequivocally represent and warrant to the District that neither CM nor any person who holds equity interest in CM's organization is a former or current holder of any equity interest in the firm identified or has any financial interest in the firm identified. District reserves the sole discretion to waive this subsection's requirements on a case-by-case basis.

ARTICLE 4. CM Staff

- 4.1 The District selected CM to perform the Services because of the CM's skills and expertise of key personnel.

4.2 CM agrees that the following key personnel in CM's firm shall be associated with the Project and perform the Services in the following capacities:

Principal In Charge:	Bill Johal
Project Director:	Jeff Dees/Dan Porter
Construction Manager:	Eli Gero
Scheduler:	Rick Stassi
Field Office Manager/Clerical:	Jo Ward

4.3 CM shall not change any of the key personnel listed above without the District's prior written approval, unless said personnel cease to be employed by CM. Regardless of the reason for the change in key personnel, District shall be allowed to interview and retains the right to approve replacement personnel.

4.4 If any designated lead or key person fails to perform to the satisfaction of the District, then upon the District's written notice, the CM will have seven (7) calendar days to remove that person from the Project and shall provide a replacement person acceptable to the District.

4.4.1 All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this Agreement.

4.5 CM represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement. CM agrees further that no person having any such interest shall be employed by CM.

ARTICLE 5. Schedule of Work

CM shall commence work under this Agreement upon receipt of a Notice to Proceed and shall prosecute the work diligently as described in **Exhibit "A"** so as to proceed with and complete the Services in compliance with the schedule attached as **Exhibit "C."** Time is of the essence and failure of CM to perform work on time as specified in this Agreement is a material breach of this Agreement.

ARTICLE 6. Construction Cost Budget

- 6.1 CM shall have responsibility, along with the Architect, to develop, review, and reconcile the Construction Cost Budget per Project with the Architect and the District throughout the design process and construction.
- 6.2 The Construction Cost Budget shall be the total cost to District of all Project elements the Design Team designs or specifies.
- 6.3 CM shall work cooperatively with the Project Design Team throughout the Project, including but not limited to, the Schematic Design Phase, Design Development Phase, and Construction Documents Phase, as described in **Exhibit "A,"** so that the Project's construction cost as designed by the Project Design Team will not exceed the Construction Cost Budget, as may be adjusted subsequently with the District's written approval. CM shall notify the District if it believes the Project's construction cost of the work by the Project Design Team will exceed the Construction Cost Budget, and/or if it believes the construction cost as designed will exceed the Construction Cost Budget. CM, however, shall not perform or be responsible for any design or architectural services.
- 6.4 Evaluations of the District's Construction Budget, and CM's preliminary and detailed cost estimates, represent the CM's best judgment as a professional familiar with the construction industry.
- 6.5 If the Bidding Phase has not commenced within ninety (90) days after DSA approval of the plans and specifications, the Construction Cost Budget may be adjusted at District's request to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the District and the date on which proposals are sought.
- 6.6 The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 6.7 occur:
 - 6.6.1 Give CM written approval of an agreed adjustment to the Construction Cost Budget.
 - 6.6.2 Authorize CM to re-negotiate and/or re-bid the Project, when appropriate, within three (3) months' time of receipt of bids, at no additional cost to the District (exclusive of District and other agencies' review time).

- 6.6.3 Terminate this Agreement if the Project is abandoned by the District without further obligation by either party.
- 6.6.4 Within three (3) months of receipt of bids, instruct Design Team to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding. CM will perform cost estimation, value engineering, constructability reviews, and/or bidding support at no additional cost to the District.
- 6.7 If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 6.6 above:
 - 6.7.1 The lowest responsive base bid received is five percent (5%) or more in excess of the Construction Cost Budget or
 - 6.7.2 The combined total of base bid and all additive alternates equal or exceed ten percent (10%) of the Construction Cost Budget; or
 - 6.7.3 The Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the Sacramento Area, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

ARTICLE 7. Fee and Method of Payment for Basic Services

- 7.1 District shall pay CM an amount not to exceed Two Million Seven Hundred Ninety Thousand Three Hundred Dollars (\$2,790,300) for all services contracted for under this Agreement and based on the Fee Schedule set forth in **Exhibit "D."**
- 7.2 District shall pay CM the Fee pursuant to the provisions herein and the method of payment set forth in **Exhibit "D."**
- 7.3 CM shall bill its work under this Agreement on a percent of completion basis in accordance with **Exhibit "D."**
- 7.4 No increase in fee will be due from change orders generated during the construction period to the extent caused by CM's error(s) or omission(s).
- 7.5 The CM's fee set forth in this Agreement shall be full compensation for all of CM's Services incurred in the performance hereof as indicated in **Exhibit "D,"** including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location, offices, per diem expenses, printing, providing or shipping of deliverables in the quantities set forth in **Exhibit "A."**

ARTICLE 8. Payment for Extra Services

- 8.1 Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** at the rates set forth in **Exhibit "D"** only upon certification of the District's prior written authorization of the claimed Extra Services and the Extra Services have been satisfactorily completed.
- 8.2 CM shall submit to District a written proposal describing the proposed scope of services and listing the personnel, labor duration, rates, and cost. CM shall proceed with Extra Services only upon receiving the District's prior written authorization. CM will not be entitled to any compensation for Extra Services performed prior to receiving District's written authorization.
- 8.3 If CM performs any Extra Services without the District's authorized representative's prior written authorization, the District will not be obligated to pay for such Extra Services. The foregoing provision notwithstanding, CM will be paid by the District as described in **Exhibit "B"** for Extra Services the District's authorized representative verbally requests, provided CM confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives CM's written confirmation of the request.

ARTICLE 9. Ownership of Data

- 9.1 All of CM's work product prepared or generated in connection with this Agreement is the District's property.
- 9.2 Upon the District's request, the CM shall make available to the District all work product completed or in progress at the time of such a request.
- 9.3 After Project completion or, if the District exercises the right to terminate this Agreement pursuant to the Agreement terms, CM shall assemble and deliver to District within five (5) calendar days of the District's written request, all of CM's work product of the generated, prepared, reviewed or compiled in connection with this Agreement and the Services and authorized Extra Services hereunder. This includes, without limitation, all CM generated documents, copies of all documents CM exchanged with or copied to or from all other Project participants, and all closeout documents. CM shall be index and organize appropriately said Project records for easy use by District personnel.
- 9.4 All Project records are District property, whether or not those records are in the CM's possession. District retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that CM or its Consultants prepare or cause to be prepared pursuant to this Agreement. Notwithstanding the preceding sentence, CM and its Consultants shall be entitled to reuse work product generated under this Agreement.

ARTICLE 10.

Termination of Contract

- 10.1 District's Request for Assurances: If District at any time reasonably believes CM is or may be in default under this Agreement, District may in its sole discretion notify CM of this fact and request written assurances from CM of performance of Services and a written plan from CM to remedy any potential default under the terms this Agreement that the District may advise CM of in writing. CM 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. CM'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 Agreement sufficient to justify termination for cause.
- 10.2 District's Termination of CM for Cause: If CM fails to perform CM's duties to the District's satisfaction, or if CM fails to fulfill in a timely and professional manner CM's material obligations under this Agreement, or if CM violates any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement effective immediately upon the District giving CM written notice thereof. In the event of a termination pursuant to this subdivision, CM may invoice District for all work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of CM's actions, errors, or omissions.
- 10.3 District's Termination of CM for Convenience: District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, CM may invoice District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to CM if there is a termination for convenience.
- 10.4 CM's Termination of Agreement for Cause: CM has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from CM. Such termination shall be effective after receipt of written notice from CM to the District.
- 10.5 Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 10.6 Ceasing Services upon Termination: If, at any time in the progress of performing Services under this Agreement, the District determines that CM's Services should be terminated, the CM, upon the District's written notice of such termination, shall immediately cease providing Services, except to transfer files as directed by the District. The District shall pay CM only the fee

associated with the Services provided and approved by District since the last paid invoice and up to the notice of termination.

- 10.7 Project Suspension: If the Project is suspended by the District for more than one hundred and eighty (180) consecutive days, the CM shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the schedule shall be adjusted and the CM's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the CM's Services. CM shall make every effort to maintain the same Project personnel after suspension.

ARTICLE 11. Indemnity

- 11.1 To the furthest extent permitted by California law, CM shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim") to the extent caused by the negligence, recklessness, or willful misconduct of the CM, its officers, employees, subcontractors, consultants, or agents, including without limitation, the payment of all consequential damages. CM shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at CM's own expense, including attorneys' fees and costs, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.
- 11.2 CM shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. CM's obligation pursuant to Article 11.1 includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to, legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s), or to enforce the indemnity herein. CM's obligation to indemnify shall not be restricted to insurance proceeds.
- 11.3 District may withhold from amounts owing to CM any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CM.

ARTICLE 12. Conduct on Project Site and Fingerprinting

- 12.1 Unacceptable and/or loud language will not be tolerated. "Cat calls" or other derogatory language toward students or public will not be allowed.
- 12.2 Drugs, alcohol, and smoking on District property are strictly prohibited. No drugs, alcohol and/or smoking are allowed at any time in any building and/or grounds on District's property. No students, staff, visitors or contractors are to use drugs on District's property.

- 12.3 Pursuant to Education Code section 45125.2, the District has determined on the basis of the scope of Services in this Agreement that CM and its subcontractors and employees will have only limited contact with pupils. CM will promptly notify the District in writing of any facts or circumstances which might reasonably lead the District to determine that contact will be more than limited. Should there be more than limited contact, CM shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. CM shall not permit any employee to have any contact with District pupils until such time as the CM has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. CM's responsibility shall extend to all employees, agents, and employees or agents of its Consultants regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as CM's independent contractors. CM shall provide to District verification of compliance with this section by submitting an executed Criminal Background Investigation Certification (**Exhibit "E"**).
- 12.4 For all workers on District property, CM shall comply with all applicable federal, state and local laws regarding COVID-19, including but not limited to the CDPH's State Public Health Officer Orders. CM shall provide to District verification of compliance with this section by submitting an executed COVID-19 Vaccination/Testing Certification (**Exhibit "F"**).

ARTICLE 13. Responsibilities of the District

- 13.1 The District shall examine the documents submitted by the CM and shall render decisions so as to avoid unreasonable delay in the process of the CM's Services.
- 13.2 The District shall provide to the CM as complete information as is available to District regarding the District's Project requirements.
- 13.3 The District shall retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between the District and design professional(s).
- 13.4 Unless the contract documents require that Contractor provide any of the following, the District shall, in a timely manner, and with CM's assistance, secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, subject to CM's and/or the Design Team's duties to recommend or provide same.
- 13.5 The District, its representatives, and consultants shall communicate with the Contractor either directly or through the CM.
- 13.6 The District shall designate an officer, employee and/or other authorized representatives to act on the District's behalf with respect to the Project. The

District's Project representative shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

ARTICLE 14. Liability of District

- 14.1 Other than as provided in this Agreement, District's obligations under this Agreement shall be limited to the payment of the compensation as provided in this Agreement. Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 14.2 CM shall pay to District any and all costs incurred by District, or for which District may become liable, to the extent caused by negligent delays, acts, or omissions of CM in its performance of its Services.
- 14.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CM, or by its employees, even though such equipment be furnished or loaned to CM by District.
- 14.4 CM hereby waives any and all claim(s) for recovery from the District under this Agreement, which loss or damage is covered by valid and collectible insurance policies. CM agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverages by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by CM's insurance company on the District's behalf.

ARTICLE 15. Insurance

- 15.1 CM shall procure, prior to commencement of Services, and will maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CM, their agents, representatives, employees and sub-consultant(s). CM's liabilities, including but not limited to, CM's indemnity or defense obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and CM's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District, subject to its sole discretion, as a material breach of contract.
- 15.2 **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits:

- 15.2.1 **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, property damage, death, advertising injury, and medical payments arising from the performance of any portion of the Services. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
- 15.2.2 **Commercial Automobile Liability, Any Auto.** One million dollars (\$1,000,000) per occurrence.
- 15.2.3 **Workers' Compensation.** Statutory limits required by the State of California. For all of the CM's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, CM shall keep in full force and effect, a Workers' Compensation policy. CM shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.2.4 **Employer's Liability.** One million dollars (\$1,000,000) per accident for bodily injury or disease. For all of the CM's employees who are subject to this Agreement, CM shall keep in full force and effect, an Employers' Liability policy. That policy shall provide employers' liability coverage with minimum liability coverage of Two million dollars (\$2,000,000) per occurrence. CM shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 15.2.5 **Professional Liability.** This insurance shall cover the CM and its sub-consultant(s), if any, for one million dollars (\$1,000,000) aggregate limit subject to no claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.
- 15.3 The District reserves the right to modify the limits and coverages described herein, with appropriate credits or charges to be negotiated for such changes.
- 15.4 **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retention exceeding Twenty-Five Thousand Dollars (\$25,000) must be declared to and approved by the District. At the option of the District, either:
- 15.4.1 The District can accept the higher deductible;

- 15.4.2 CM's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or
- 15.4.3 CM shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 15.5 **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 15.5.1 All policies except for the worker's compensation, employer's liability and professional liability insurance policy shall be written on an occurrence form.
 - 15.5.2 The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the CM; Instruments of Service and completed operations of the CM; premises owned, occupied or used by the CM; or automobiles owned, leased, hired or borrowed by the CM. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. All endorsements shall waive any right to subrogation against any of the Additional Insureds.
 - 15.5.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
 - 15.5.4 CM shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If CM fails to maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due CM under the Agreement.
 - 15.5.5 The CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 15.5.6 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, not renewed, or material change in coverage except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
 - 15.5.7 CM's insurance coverage shall be primary and non-contributory insurance as respects the Additional Insureds with respect to any claims related to, arising out of, or connected with the Project. Any insurance or self-insurance maintained by the Additional Insureds

shall be in excess of the CM's insurance and shall not contribute with it.

- 15.5.8 Construction Manager shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 - 15.5.9 CM shall require all subconsultants to maintain the level of insurance CM deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. CM shall cause the subconsultants to furnish proof thereof to District within ten (10) days of District's request. Should CM not require subconsultants to provide the same level of insurance as is required of CM, as provided in this Agreement, CM is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
 - 15.5.10 If CM normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, CM hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.
- 15.6 **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A:VII. CM shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A:VII. At the option of the District, the District may either:
- 15.6.1 Accept the lower rating; or
 - 15.6.2 Require CM to procure insurance from another insurer.
- 15.7 **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, but no later than three (3) calendar after the Notice of Award, CM shall furnish the District with:
- 15.7.1 Certificates of insurance showing maintenance of the required insurance coverage;
 - 15.7.2 Original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences.
- 15.8 **Copy of Insurance Policy(ies):** Upon the District's request, CM will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

ARTICLE 16. Nondiscrimination

CM 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 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 Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

ARTICLE 17. Covenant Against Contingent Fees

CM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CM, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CM, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage fee, gift, or contingency.

ARTICLE 18. Entire Agreement/Modification

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. CM shall be entitled to no benefit other than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. CM specifically acknowledges that in entering into this Agreement, CM relies solely upon the provisions contained in this Agreement and no others.

ARTICLE 19. Non-Assignment of Agreement

This Agreement is intended to secure the CM's specialized services. CM may not assign, transfer, delegate or sublet any interest therein without the District's prior written consent. Any assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void.

ARTICLE 20. Law, Venue

- 20.1 This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 20.2 To the fullest extent permitted by California law, Sacramento County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 21. Alternative Dispute Resolution

- 21.1 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 21.2 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 21.3 Notwithstanding any disputes, claims or other disagreements between the CM and the District, CM shall continue to provide and perform Services hereunder pending a subsequent resolution of such disputes.

ARTICLE 22. [RESERVED]

ARTICLE 23. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 24. Employment Status

- 24.1 CM shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which CM performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by CM shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 24.2 CM understands and agrees that CM's personnel are not and will not be eligible for: membership in, or to receive any benefits from, any District group plan for hospital, surgical or medical insurance; membership in any District retirement program; paid vacation, paid sick leave or other leave, with or without pay; or any other benefits which accrue to a District employee.

- 24.3 Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that CM or any employee of CM is an employee of District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by CM which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 24.4 Should a relevant taxing authority determine a liability for past services performed by CM for District, upon notification of such fact by District, CM shall promptly remit the amount due or arrange with District to have the amount due withheld from future payments to CM under this Agreement (again, offsetting any amounts already paid by CM which can be applied as a credit against that liability).
- 24.5 A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, CM shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine CM is an employee for any other purpose, then CM agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined CM was not an employee.
- 24.6 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

ARTICLE 25. Warranty of CM

- 25.1 CM warrants that CM is properly licensed and/or certified under the laws and regulations of the State of California to provide the Services that it has herein agreed to perform. CM further warrants that all of the work CM performs under this Agreement shall comply with all applicable laws, rules, regulations and codes of the United States and the State of California. CM also warrants that it shall comply with all applicable ordinances, regulations, and resolutions of Sacramento County.
- 25.2 CM certifies that it is aware of the provisions of the California Labor Code of the State of California, requiring every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that, if applicable, it will comply with those provisions before commencing the performance of the work of this Agreement.
- 25.3 To the extent that the work performed under this contract is subject to labor compliance and enforcement by the DIR, CM specifically acknowledges and understands that it shall perform the Services while complying with all

applicable provisions of Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations, including all applicable prevailing wage requirements.

ARTICLE 26. Cost Disclosure - Documents and Written Reports

CM shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over five thousand dollars (\$5,000).

ARTICLE 27. Communications / Notice

Notices and communications between the Parties to this Agreement may be sent to the following addresses by registered or certified mail with postage prepaid, return receipt requested, by overnight delivery service, or by personal delivery:

District:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
ATTN: Contracts Office

CM:

Kitchell/CEM, Inc.
2450 Venture Oaks Way Ste 500
Sacramento, CA 95833
ATTN: Jeff Dees

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. If notice is given by overnight delivery service, it shall be considered delivered on the date stated in the proof of delivery.

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

ARTICLE 28. [RESERVED]

ARTICLE 29. District's Right to Audit

29.1 District retains the right to review and audit, and the reasonable right of access to CM's and any Consultant's premises to review and audit the CM's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of CM's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

29.2 The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether CM is in compliance with all requirements of this Agreement.

29.3 If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the

District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 29.4 CM shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. CM shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, CM shall submit exact duplicates of originals of all requested records to the District.
- 29.5 CM shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 29.6 CM shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of CM's Project-related records and information.

ARTICLE 30. Other Provisions

- 30.1 CM shall be responsible for the cost of construction change orders caused directly by CM's willful misconduct or negligent acts, errors or omissions. Without limiting CM's liability for indirect or consequential cost impacts, the direct costs for which CM shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had such work been a part of the originally prepared Construction Documents. These amounts shall be paid by CM to District or the District may withhold those costs from amounts due or to become due to CM.
- 30.2 Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and CM shall remain liable to the District in accordance with this Agreement for all damages to the District caused by CM's failure to perform any of the Services furnished under this Agreement to the standard of care of the CM for its Services, which shall be, at a minimum, the standard of care of construction managers performing similar work for California public school districts at or around the same time and in or around the same geographic area of the District.
- 30.3 CM shall share, credit, or reimburse District fifty percent (50%) of the amount of any tax deduction and/or credit CM receives for District Projects under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D"). CM shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction. CM shall notify District in writing of the Section 179D tax deduction within 30 days of when CM receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.
- 30.4 Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement

was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

- 30.5 The individual executing this Agreement on behalf of CM warrants and represents that she/he is authorized to execute this Agreement and bind the CM to all terms hereof.
- 30.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.

ARTICLE 31. Exhibits.

Exhibits "A" through "F" attached hereto are hereby incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

KITCHELL/CEM, INC.

By: _____
Rose Ramos
Chief Business Officer

By: _____
Wendy Cohen
President

Date: _____

Date: _____

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANGER

	<u>Page</u>
1. BASIC SERVICES.....	1
2. GENERAL PROJECT SERVICES	4
3. PRECONSTRUCTION PHASE.....	5
4. PRE-BID PHASE	7
5. BIDDING PHASE	7
6. CONSTRUCTION PHASE	8
7. PROJECT COMPLETION	11
8. FINAL DOCUMENTS.....	12

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANGER

Construction Manager ("CM") shall provide professional services necessary for completing the following:

1. BASIC SERVICES

- 1.1. Provide work which shall comply with professional standards and applicable requirements of federal, state, and local law.
- 1.2. Monitor and advise the District as to all material developments in the Project. Maintain reporting systems for scope, sequencing, scheduling, budgets and communication for the Project using existing District software.
- 1.3. Be the focal point of all communication to and from construction Contractor(s).
- 1.4. Implement methods to budget and track all expenditures on the Project. CM shall generate monthly reports to the District reflecting this information.
- 1.5. Prepare methods to track and report on schedule status for the Project. CM shall develop master schedules and milestone schedules for the Project, and shall report on same each month to the District.
- 1.6. CM shall work cooperatively with District to anticipate and maintain a schedule of upcoming Board information and action items and shall prepare reports, background materials, and preliminary materials in District-specified format.
- 1.7. CM shall work cooperatively with the Design Team and the District to:
 - 1.7.1. Define and schedule the Project.
 - 1.7.2. Provide Services that will result in the development of an overall Project strategy with regard to phases, construction schedules, timing, budget, prequalification, contractor and consultant procurement, construction materials, building systems, and equipment.
- 1.8. Organize an initial planning workshop to create baseline parameters for the Project(s), to define overall building requirements, Project(s) strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, CM will develop an implementation plan that identifies the various phases of the Project(s), coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, Project Budget and Project schedule as well as identification of critical events and milestone activities.
- 1.9. Perform constructability reviews, determine construction feasibility, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs, of materials, preliminary budgets, and possible economies.

- 1.10. Interface with the Contractor and all subcontractors during construction to ensure that the District is provided with an acceptable Project and the best value for taxpayer dollars.
- 1.11. Advise the District as to the regulatory agencies that have jurisdiction over any portion or all of the Project, and as to coordination with and implementation of the requirements of the regulatory agencies, including without limitation DSA.
- 1.12. Contract for or employ, at CM's expense, sub-consultant(s) to the extent deemed necessary for CM's services. Nothing in the foregoing shall create any contractual relationship between the District and any sub-consultant(s) employed by the CM under terms of this Agreement.
- 1.13. Cooperate with the District, Board, and other professionals employed by the District for the design, coordination or management of other work related to the Project, including District staff and consultants, project manager(s), citizens' oversight committee, other District committees, and the community to facilitate the timely completion of the Project within Board-approved budgets and to District design standards.
- 1.14. Chair, conduct and take minutes of periodic meetings between District and its design professional(s), the Site Committee meetings, and construction meetings during the course of the Project. CM shall invite the District and/or its representative and the Project Inspector to participate in these meetings. CM shall keep meeting minutes to document comments generated in these meetings.
- 1.15. Develop for District approval a Project time schedule at the start of Project development that does the following:
 - 1.15.1. Provides sufficient time for prequalification, and if necessary the resolution of any appeals, bidding, and, if necessary, rebidding, or negotiating if applicable, the Project;
 - 1.15.2. Coordinates and integrates the design professional(s)' design efforts with bidding schedules;
 - 1.15.3. Includes realistic activity sequences and durations, allocation of labor and materials and delivery of products requiring long lead-time procurement; and
 - 1.15.4. Takes into account the District's occupancy requirements (showing portions of the Project having occupancy priority and ongoing operational occupancy requirements).
- 1.16. Be responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by CM under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by District to CM. CM shall, without additional compensation, correct or revise any errors or omissions in materials it generates.
- 1.17. Maintain a log of all meetings, site visits or discussions held in conjunction with the work of the Project, with documentation of major discussion points, observations, decisions,

questions or comments. These shall be furnished to the District and/or its representative for inclusion in the overall Project documentation.

- 1.18. Coordinate transmittal of documents to regulatory agencies for review and advise the District of potential problems in completion of such reviews.
- 1.19. Prepare a bidders list for each bid package for approval by the District.
- 1.20. Assistance with administration of the prequalification process;
- 1.21. Assistance in development of documents necessary or appropriate for bidding the Construction Contract for the Project;
- 1.22. Development of bidders' interest in a Project, including but not limited to telephonic and correspondence campaigns and preparing and placing notices and advertisements to solicit bids for the Project(s);
- 1.23. Assistance in conducting job walks and bidders' conferences and the maintenance and preparation of minutes of job walks or bidder's conferences;
- 1.24. Assistance in responding to bidders' inquiries and the development of bid addenda as necessary or appropriate;
- 1.25. Review of bid proposals for responsiveness to bid requirements, evaluation of bidder responsibility, and analysis of completed questionnaires;
- 1.26. Interviewing possible bidders, references, bonding agents and financial institutions;
- 1.27. Preparing recommendations for the District for pre-qualification of prospective bidders;
- 1.28. Tabulations and evaluation of bid results along with a recommendation for award of the Construction Contract for a Project;
- 1.29. Assisting with resolution of any appeals;
- 1.30. For Lease Leaseback projects, coordinate Request for Qualifications/Proposals ("RFP") process and assist in negotiation of agreements, including, Site Lease and Facilities Lease with guaranteed maximum price; and
- 1.31. Preparation of agenda items for Board approval.
- 1.32. Provide documentation, pictures, and other information and assistance to the District for the District's use on a website for public access to show Project status.
- 1.33. Provide direction and planning to ensure Project adherence to applicable environmental requirements, such as those emanating from the Environmental Protection Agency ("EPA"), Cal/EPA, the California Environmental Quality Act ("CEQA"), and State of California laws, regulations and rules. CM shall comply with, and ensure that all Consultants, all Contractors and their subcontractors and design professionals and their subconsultants comply with, any storm water pollution prevention plans, other storm water management program and other environmental impact mitigation requirements that are approved by the District and applicable to the Project, at no additional cost to the District.

- 1.34. Cooperate and implement District's reporting to and interface with the Labor Commissioner's Office, including but not limited to:
 - 1.34.1. Registering public works project with the Department of Industrial Relations (DIR) within thirty (30) days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work;
 - 1.34.2. Requiring proof of public works contractor registration before accepting a bid or awarding a contract; and
 - 1.34.3. Reporting any suspected public works violations to the Labor Commissioner.
- 1.35. CM shall maintain accurate Project cost accounting records maintained with generally accepted accounting principles ("GAAP") on authorized work performed under unit costs, actual costs for labor and material, or other basis for maintaining required accounting records. CM shall provide accounting records to the District on a monthly basis, or as reasonably requested by District. CM shall afford the District access to these records and preserve these records for a period of three (3) years after final payment, at no cost to the District.
- 1.36. Assist Architect with the preparation of an estimate of costs for all addenda and coordinate with Architect to submit the estimate to the District for approval. Assist and coordinate with Architect as required to adjust the Construction Cost Budget and other Project costs as indicated in this Agreement and as required in the Agreement for Architectural Services.
- 1.37. Provide and maintain a management presence on the Project site.
- 1.38. CM is **NOT** responsible for:
 - 1.38.1. Ground contamination or hazardous material analysis.
 - 1.38.2. Any asbestos testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 1.38.3. Compliance with the California Environmental Quality Act ("CEQA"), except that CM agrees to coordinate its work with that of any CEQA consultants retained by the District, and the work of Contractor and the Design Team to provide current information for use in CEQA compliance documents and to identify and carry out mitigation measures.
 - 1.38.4. Historical significance report.
 - 1.38.5. Soils investigation.
 - 1.38.6. Geotechnical hazard report.
 - 1.38.7. Topographic survey, including utility locating services.

2. GENERAL PROJECT SERVICES

- 2.1 **General:** Monitor and advise the District and Program Manager as to all material developments on the Project. CM shall implement with District approval reporting methods developed by Program Manager for schedules, cost and budget status. The CM shall be

the focal point of all communication to and from construction Contractor and shall be copied on all communications between the District and its Design Team.

- 2.2 **Scheduling:** Track and report on schedule status for Project. The CM shall develop Project master schedules and milestone schedules, and review and approve Contractor project schedules and milestone schedules for the project per specifications, and shall report on same each month to the District and Program Manager.
- 2.3 **Cost Controls:** Implement methods to track construction expenditures on the Project using methods developed by Program Manager. The CM shall generate monthly reports to the District reflecting this information.

3. PRECONSTRUCTION PHASE

- 3.1 To the extent requested by District or Program Manager, assist with providing overall coordination of the Project; serve as the focal point of communication, transmitting information to the District and Design Team on general aspects of the Project, including planning, scheduling, cost management, progress reporting, design review, dispute resolution, and documentation. Communications from the construction Contractor to the District and Design Team shall be through the CM. The CM shall receive simultaneous copies of all written communications from the District or the Design Team to the construction Contractor.
- 3.2 To the extent requested by District or Program Manager, assist with the detailed definition of project scope, budget, and schedule, as needed. Review and reconcile cost estimates from the assigned architect and coordinate peer review estimates when requested by the District. Advise the District regarding owner-supplied equipment and other potential cost-saving measures.
- 3.3 To the extent requested by District or Program Manager, assist the District in the solicitation and retention of design and engineering consultants, and coordinate design consultants' activities and delivery schedules, as needed. Provide value engineering and life cycle cost analysis.
- 3.4 Provide design-phase services in conjunction with the architecture firms awarded the Project by the District. Work with the Architect to conform and refine designs to correlate designs to budget and Facilities Master Plan, if applicable. Review design documents for constructability, scheduling, consistency, and coordination during schematic and design development phases of work. Perform constructability reviews at appropriate stages of design. Assist with verification of site conditions. Expedite design reviews, including modifications. Keep accurate documentation of all discussions with users regarding scope and resolution.
- 3.5 Prepare and maintain a Construction Management schedule for the Project. Prepare a procurement plan and move in occupancy planning, where required.
- 3.6 To the extent requested by District or Program Manager, assist with monitoring and reporting to the District on status of design and state approval in relation to the schedule for the Project. Attend meetings to coordinate design efforts for the Project. Assist in identifying and obtaining all necessary approvals.

- 3.7 To the extent requested by District or Program Manager, assist with soliciting proposals, evaluate, and recommend other professional consultants needed to complete the Project.
- 3.8 Implement District-approved implementation procedures, forms and reporting requirements for the Project that involve all members of the Project team, including the District, Design Team, and construction Contractor.
- 3.9 Work with the Design Team and District to develop the final sizes, choice of materials, services and utilities and other detailed design and performance criteria of the Project.
- 3.10 To the extent requested by District or Program Manager, provide value engineering at the Schematic Design and/or 100% Design Development Phase. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the design documents and shall be coordinated with the District's design guidelines and design professional(s). The CM will prepare a value engineering report documenting the results of the evaluation and make recommendations to the District with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The CM shall provide to the District value engineering recommendations and cost/benefit analysis of those recommendations.
- 3.11 Perform or subcontract for constructability reviews of the Project at the Design Development Phase and at 90% of the Construction Documents Phase. The CM shall review the design documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The CM shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration.
- 3.12 Develop master bid/award schedule(s) including construction milestones for the Project through the completion of construction, as directed by the District, in coordination with design professional(s) and advise and consult with the District. CM shall review and approve construction Contractor's schedules, but shall not dictate any construction Contractor's means and/or methods of performance.
- 3.13 Establish schedules for any Consultant, and for any hazardous materials or other testing, and review costs, estimates, and invoices of each.
- 3.14 Implement a management control system to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project. Prepare monthly progress reports for the District regarding the schedule for the Project.
- 3.15 To the extent requested by District or Program Manager, organize an initial planning workshop to create baseline parameters for the Project, to define overall building requirements, Project strategy, conceptual budget and schedule. Pursuant to understandings reached at these meetings, Construction Manager will develop an implementation plan that identifies the various phases of the Project, coordination among phases, and budget and time constraints for each phase of the Project. The plan will include a detailed strategy, master budget and master schedule as well as identification of critical events and milestone activities.

- 3.16 To the extent requested by District or Program Manager, provide updated cost estimates for the Project at the Schematic Design, Design Development, and Construction Documents Phases as directed by District; coordinate with design professional(s) and reconcile cost estimates with design professional(s)' estimates.
- 3.17 Advise District regarding "green building" technology and lifecycle costing, when applicable.
- 3.18 Fully coordinate all changes requested by any utility company needed to complete the Project.
- 3.19 Review and tailor the District's front end documents for the Project. Recommend the number of days required for the construction phase (and any sub-phases, such as hazardous material abatement) and recommend the amount of the liquidated damages.

4. PRE-BID PHASE

- 4.1 Develop master schedules and construction schedules for the Project. Develop budget(s) for the Project based on construction cost estimates.
- 4.2 In consultation with the District and according to District-approved policies, procedures, and standards, implement procedures, forms, and reporting requirements for the Project. Establish, accordingly, a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 4.3 Work with the Program Manager and Design Team to modify or add to standard, special, or general conditions for contract documents that might be needed for unique Project or contract conditions, for the District's approval, and/or assist in the development of documents necessary for the bidding phase.
- 4.4 To the extent requested by District or Program Manager, make recommendations for development and implementation of procedures to comply with applicable bidding or RFP requirements for the Project as applicable and for expediting completion of the bidding process for the Project. The scope of the foregoing includes without limitation, recommendations of CM with respect to: (a) pre-qualification of potential contractors; (b) combination of two or more of the Projects for design, bidding and/or construction purposes; and (c) alternative construction delivery approaches for the Project, including consideration of a single general contractor and/or Lease Leaseback approach to construction for each Project.

5. BIDDING PHASE

- 5.1 To the extent requested by District or Program Manager, assist with pre-qualification process for the selection of prime and/or sub-contractors based on the detailed definition of Project scope, budget, schedule, and programming support. Develop a list of pre-qualified prime and sub-contractors, as required.
- 5.2 Develop bidders' interest in the Project. Coordinate all bid phase activities with District departments. Conduct pre-bid conferences to familiarize bidders with the bidding documents, and any special systems, materials or methods and with Project procedures.

Conduct job walks and bidders' conferences, maintain and prepare minutes of job walks or bidder's conferences. Field questions from bidders, referring questions to Design Team and District as required. Coordinate with Design Team to respond to bidder questions by addenda.

- 5.3 Prepare public solicitation notices for District approval. Review, coordinate, and estimate cost of bid phase addenda.
- 5.4 Review bid proposals for responsiveness to bid requirements, evaluate bidder responsibility, and conduct reference checks. Prepare bid analyses and advise the District on compliance of bidders with District requirements and bid requirements. Report and recommend to the District after review and evaluation. Make recommendations to the District for prequalification of bidders and award of contracts or rejection of bids.
- 5.5 Conduct post-bid conferences as required. Assist and advise regarding bid protests.
- 5.6 If appropriate, coordinate contracting with Contractor awarded the contract, including evaluating bonds and insurance, and negotiate final terms of construction contractor's contract(s), if applicable.
- 5.7 Conduct pre-award conferences with successful bidders.
- 5.8 Schedule and conduct preconstruction meetings. Maintain, prepare, and distribute minutes.
- 5.9 Assist with the preparation of agenda items for Board approval. Coordinate submittals required by governing agencies.

6. CONSTRUCTION PHASE

- 6.1 Administer the construction Contract.
- 6.2 Develop detailed construction schedules or review Contractor's submitted schedules, as needed. Administer and coordinate the work of Contractor on a daily basis. Enforce performance, scheduling, and notice requirements. Review Contractor's schedule submittals and make recommendations to the District.
- 6.3 Monitor schedule and cost information for Contractor. Document the progress and costs of the Project. Report and advise proactively on potential schedule and budget variances and impacts. Recommend potential solutions to schedule and cost problems. Work cooperatively with the District, Architect, and Contractor to ensure that Project is delivered on time and within budget. Review construction progress and prepare reports.
- 6.4 Verify permits, approvals, bonds, insurances, and schedules of values. Coordinate with DSA Project Inspector, and ensure compliance with all DSA reporting and closeout requirements. Submit necessary reports to state and local authorities.
- 6.5 Monitor the construction Contractor to verify that tools, equipment, and labor are furnished and work performed and completed within the time required or indicated by the plans and specifications, under the direction and to the satisfaction of the District. The CM expressly

agrees to verify that the specifications are met, observed, performed, and followed in accordance with the professional standards of care for construction management.

- 6.6 Coordinate work of the construction Contractor and effectively manage the Project to achieve the District's objectives in relation to cost, time and quality.
- 6.7 Provide continuous on-site construction management personnel, as needed. Conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. Said meetings shall be weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the District, the affected construction Contractor, and Design Team.
- 6.8 Establish and implement team communication procedures.
- 6.9 Ensure that construction Contractor provides construction schedules as required by the construction Contracts, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead time. The CM shall review construction Contractor's construction schedules for conformity with the requirements of the construction Contract and conformity with the overall schedule for the Project. Where construction Contractor's construction schedules do not so conform, the CM will take appropriate measures to secure compliance, subject to District approval.
- 6.10 Ensure construction Contractor's compliance with the requirements of the respective construction Contract for updating, revising, and other obligations relative to their respective construction schedules.
- 6.11 Cost Control. CM shall develop and monitor an effective system of construction cost control for the Project. CM shall identify variances between actual and budgeted or estimated costs and advise District and design professional(s) whenever a Project cost exceeds budgets or estimates. CM shall manage the construction bids and contracts in accordance with the Construction Budget.
- 6.12 Continually monitor whether construction contract requirements are being fulfilled and recommend courses of action to the District when Contractor fails to fulfill contractual requirements.
- 6.13 The CM may authorize minor variations in the work from the requirements of the contract documents that do not involve an adjustment in the contract price or the contract time or design and which are consistent with the overall intent of the contract documents. The CM shall provide to the design professional(s) and the District copies of these authorizations.
- 6.14 Evaluate and process payment applications and verify progress.
- 6.15 Verify that safety programs are developed and submitted by the construction Contractor as required by the Contract. Neither CM, Project Manager nor District shall be responsible for or have any liability for Contractor's failure to provide, comply with, or enforce said safety programs.

- 6.16 Implement quality control program, including As-Built Drawings accuracy. Coordinate and evaluate Contractor's recovery schedules.
- 6.17 Record the progress of the Project by a log.
- 6.18 Monitor ongoing Project costs to verify that projected costs do not exceed approved budget and provide the District timely notice of any potential increase in costs in excess of approved budgets provided to CM.
- 6.19 Negotiate Contractor's proposals and review change orders prepared by Design Team, with Design Team's input as needed, for approval by the District.
- 6.20 Evaluate and process change order requests. Make recommendations to the District. Determine cost and schedule effects of change orders. Prepare change order reports and maintain a change order log for the Project and implement procedures to expedite processing of change orders.
- 6.21 Assist the District in coordinating the services of special consultants and testing laboratories on the Project.
- 6.22 In conjunction with the Design Team, monitor work of the construction Contractor to determine that the work is being performed in accordance with the requirements of the respective construction documents for the Project, including but not limited to the plans, specifications, addenda, and all other contract documents, as well as all applicable laws, regulations and directives of agencies with jurisdiction over any of the Project. As appropriate, with assistance of Design Team, make recommendations to the District and Program Manager regarding special inspection or testing of work that is not in accordance with the provisions of the contract documents.
- 6.23 To guard District against defects in the work of the construction Contractor, the CM shall implement a quality control program to monitor the quality and workmanship of construction for conformity with:
 - 6.23.1 Accepted industry standards;
 - 6.23.2 Applicable laws, rules, or ordinances; and
 - 6.23.3 The design documents and contract documents.
- 6.24 Where the work of a construction Contractor does not conform as set forth above, the CM shall, with the input of Design Team:
 - 6.24.1 Notify the District of any non-conforming work observed by the CM;
 - 6.24.2 Reject the non-conforming work; and
 - 6.24.3 Take any and all action(s) necessary to compel the construction Contractor to correct the work.
- 6.25 Evaluate, track, and maintain logs of requests for information ("RFI") from construction Contractor and responses, shop drawings, samples, and other submittals, based, in part, on

information obtained from the design professional(s). Advise District and Program Manager as to status and criticality of RFIs.

- 6.26 Implement procedures, in collaboration with the District, Program Manager and Design Team, for expediting the processing and approval of shop drawings, product data, samples, and other submittals for each contract. Receive and transmit all submittals from the construction Contractor to the Design Team for review and approval. Maintain submittal and shop drawing logs.
- 6.27 Record the progress of work at the Project. When present, prepare daily reports for the Project containing a record of weather, construction Contractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.
- 6.28 Prepare and distribute monthly project status reports for the Project including updates on project activities, progress of work, outstanding issues, potential problems, schedule, and status of RFIs, change orders, and submittals.
- 6.29 Coordinate, assist, and support Architect during construction administration phase as required.
- 6.30 CM shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as provided by the construction Contractor. At the completion of the Project, deliver all such records to District. Construction Contractor and design professional(s) share responsibility to prepare Record Drawings and As-Built Drawings.
- 6.31 Coordinate the move into the Projects.
- 6.32 Work with District team to develop lists of incomplete or unsatisfactory work ("punch lists").
- 6.33 Fully document and prepare deductive change orders for extra services of consultants that are the responsibility of a Contractor or another consultant. Present such a change order for signature by the Contractor or consultant.
- 6.34 Determine final completion and payment. Determine completion dates, final payments, and release of retention. Coordinate procurement and installation of Furniture, Fixtures, and Equipment ("FF&E").

7. PROJECT COMPLETION

- 7.1 The CM shall observe the construction Contractor's check-outs of utilities, operational systems and equipment, and start-up and testing. The CM shall maintain records of start-up and testing as provided by the construction Contractor and shall ensure the District of compliance with applicable provisions of the Contract, that all work has been performed and accepted, and that all systems are complete and operative.
- 7.2 At the punch list phase of the Project or designated portions thereof, CM, in consultation with the Architect, shall ensure the preparation of a list of incomplete or unsatisfactory work or work which does not conform to the requirements of the contract documents ("punch list work") and a schedule for the completion of the punch list work. CM shall provide this list to the construction Contractor. CM shall coordinate construction

Contractor's performance and completion of punch list work. CM shall review, with the Architect and District, the completed punch list work. CM shall ensure that, with input of the Architect, the completed punch list work complies with applicable provisions of the construction Contract.

- 7.3 CM shall determine, with the Architect and District, when the Project or designated portions thereof are complete.
- 7.4 CM shall conduct, with the Architect and District, final inspections of the Project or designated portions thereof. CM shall notify the District of final completion.
- 7.5 CM shall consult with the Architect and District and shall determine when the Project and the construction Contractor's work are finally completed. CM shall assist with the issuance of a Certificate of Final Completion, and shall provide to the District a written recommendation regarding payment to the Contractor.
- 7.6 CM shall coordinate close-out procedures, including personnel training. Advise District staff on systems operations, training and close-out of Project.
- 7.7 CM shall coordinate and expedite Contractor close-out requirements, including guarantees/warranties, certificates, keys, manuals, As-Built Drawings, Record Drawings, specifications, daily logs, and verified reports. Ensure that all other project participants submit necessary close-out documentation.
- 7.8 CM shall coordinate operational safety reviews with District post occupancy and manage corrective work as necessary.
- 7.9 CM shall ensure that all building commissioning requirements have been fulfilled in a timely manner through District commissioning agents.
- 7.10 CM shall obtain occupancy permits (where required), coordinate final testing, documentation, and regulatory inspections. Prepare occupancy plan report.
- 7.11 CM shall prepare final accounting reports.

8. FINAL DOCUMENTS

The Construction Manager shall review and monitor all As-Built Drawings, maintenance and operations manuals, and other closeout documents to be sure that all required documents meeting contract requirements are provided, and shall secure and transmit to the District and Program Manager those documents and all required guarantees, keys, manuals, record drawings, and daily logs. The Construction Manager shall also forward all documents and plans to the District upon completion of the project and ensure all such plans and documents are well organized for any appropriate audit or review of the Project.

9. WARRANTY

The Construction Manager shall assist Program Manager as necessary to implement a Warranty Inspection and Warranty Work procedure for the Project that Contractor must follow. The

procedure shall include a twelve (12) month call back period and a final warranty inspection eleven (11) months after Project completion to inspect the Project and identify any outstanding warranty work.

10. PROJECT CLOSEOUT

To the extent requested by District or Program Manager, the Construction Manager shall assist District, Architect, and Program Manager as necessary to ensure all information and documentation necessary for Project closeout with the DSA is complete and the Project is timely closed out with DSA. This includes but is not limited to reports from independent consultants, inspectors, testing laboratories, and corresponding or required DSA forms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to this Agreement shall be performed by CM if needed and requested by District:

1. Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, or the District's schedule.
2. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
3. Providing services made necessary by the default of Contractor, or by major defects or deficiencies in the work of the Contractor, or by failure of performance of the District's consultants.
4. Seeking variances or changes to agency guidelines on behalf of the District when so directed by the District.
5. Preparing to serve or serving as a witness in connection with any public hearing, dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of CM or where the CM is a party thereto, except for a Contractor's hearing necessitated by a bid protest or by a Contractor's request to substitute a subcontractor, or by handling of any stop payment notices.
6. Performing technical inspection and testing.
7. Providing other services not otherwise included in this Agreement and not customarily furnished in accordance with the generally accepted scope of construction management practice.

Format and Content of Invoices

CM acknowledges that the District requires CM's invoices to include detailed explanations of the Services performed. For example, a six hour charge for the entire day is unacceptable and will not be payable. A more detailed explanation describing specific tasks is required.

Hourly Rates for Extra Services

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement. CM shall bill in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal in Charge	\$225
Project Director	\$215
Sr. Project Manager	\$195
Project Manager II / Construction Manager	\$180

Field Office Manager/Clerical	\$90
Estimator	\$140
Scheduler	\$160

2. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).

EXHIBIT "C"
SCHEDULE OF WORK

See attached.

TINA WILL INSERT SCHEDULE AS EXHIBIT C FROM PQS ONCE PDF

EXHIBIT "D"

FEE SCHEDULE

Compensation

1. The CM's fee set forth in this Agreement shall be full compensation for all of CM's Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of the Project location (travel reimbursements must be approved by District prior to travel), offices, per diem expenses, office supplies, printing, providing, or shipping of deliverables in the quantities set forth in **Exhibit "A."**
2. The amount of compensation shall be the amount set forth in the Agreement, including all billed expenses. No compensation will be paid or due, without advance written approval of the District.

Method of Payment of Basic Services

1. CM shall submit monthly invoices for the portion of the overall fee reflecting the services performed and costs incurred for each respective month. In no event shall the total payments exceed the CM's fee set forth in Article 7 this Agreement except as authorized under **Exhibit "B."**
2. CM shall submit these invoices in duplicate to the District via the District's authorized representative.
3. CM shall submit to District on a monthly basis documentation showing proof that payments were made to his/her sub-consultants.
4. Upon receipt and approval of CM's invoices, the District agrees to make payments on all undisputed amounts no later than thirty (30) days from receipt of the invoice.
5. The District may withhold or deduct from amounts otherwise due CM hereunder if CM fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after CM has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom.

EXHIBIT "E"

CRIMINAL BACKGROUND INVESTIGATION/FINGERPRINTING CERTIFICATION

PROJECT/CONTRACT NO.: 0460 between the Sacramento City Unified School District ("District") and Kitchell/CEM, Inc. ("CM") for construction management services for the Cesar Chavez / Edward Kemble New Construction Project ("Contract" or "Project").

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the CM 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 CM.

CM certifies that it has taken at least one of the following actions with respect to the Project that are the subject of the Contract (check all that apply):

- Pursuant to Education Code section 45125.2, CM has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between CM's employees and District pupils at all times; and/or
- Pursuant to Education Code section 45125.2, CM certifies that all employees will be under the continual supervision of, and monitored by, an employee of the CM 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 CM's and its subcontractors' employees is:

Name: _____

Title: _____

NOTE: If the CM is a sole proprietor, and elects the above option, CM must have the above-named employee's fingerprints prepared and submitted by the District, in accordance with Education Code section 45125.1(h). No work shall commence until such determination by the DOJ has been made.

As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District and undertake to prepare and submit CM's fingerprints as if he or she was an employee of the District.

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

- The Work on the Contract is either (i) at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of the Contract shall come in contact with the District pupils or (ii) CM's employees or any subcontractor or supplier of any tier of the Contract will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees, subcontractors or suppliers so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to CM under the Contract.

As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District.

By: _____
Rose Ramos
Chief Business Officer

Date: _____

- The CM, who is not a sole proprietor, has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all CM'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 that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of CM'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; and/or
- The CM is a sole proprietor and intends to comply with the fingerprinting requirements of Education Code section 45125.1(h) with respect to all CM'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 that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. No work shall commence until such determination by the DOJ has been made.

As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District and undertake to prepare and submit CM's fingerprints as if he or she was an employee of the District.

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

CM'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 CM.

KITCHELL/CEM, INC.

By: _____
Wendy Cohen
President

Date: _____

EXHIBIT "F"
COVID-19 VACCINATION/TESTING CERTIFICATION

Construction Manager ("CM"): Kitchell/CEM, Inc.

The California Department of Public Health ("CDPH") requires, pursuant to its August 11, 2021, Order ("Order"), that all public and private schools serving students in transitional kindergarten through grade twelve, unless exempt, are required to verify the vaccine status of all K-12 school workers, effective October 15, 2021. Further, pursuant to the Order, all such schools are required to verify that all workers are either fully vaccinated or undergo weekly diagnostic testing.

On October 12, 2021, the Board of Education of the Sacramento City Unified School District ("SCUSD") approved Resolution No. 3233: Mandatory COVID-19 Vaccination for Eligible, Non-Exempt Students and Staff, providing that as of January 31, 2022, "all non-exempt SCUSD staff (including SCUSD partners, contractors, and other individuals who work directly with students and SCUSD staff on SCUSD facilities" must be fully vaccinated prior to performing services at District facilities.

In light of these requirements, CM certifies that personnel providing services at District's Project site(s):

- Have all been fully vaccinated in accordance with the District's Policy.
- Have not all been fully vaccinated, but those who are unvaccinated or not fully vaccinated have filed a valid exemption from vaccination with CM and will undergo weekly diagnostic testing in accordance with the District's Policy..

CM understands that the District's Project site will need to comply with the District's COVID-19 requirements for fully vaccinated personnel or unvaccinated personnel. CM will comply with District policy, and all applicable state and local laws for vaccinated and unvaccinated personnel.

CERTIFICATION

I, Wendy Cohen, certify that I am CM's President and that I have made a diligent effort to ascertain the facts with regard to the representations made herein.

KITCHELL/CEM, INC.

By: _____
Wendy Cohen
President

Date: _____

END OF DOCUMENT



Agreement for Architectural Services

between

Sacramento City Unified School District

and

Nacht & Lewis Architects, Inc.

for

Architectural Services

**Albert Einstein Middle School Core Academic
Modernization**

Dated: June 9, 2022

TABLE OF CONTENTS

Article 1	Definitions.....	1
Article 2	Scope, Responsibilities and Services of Architect.....	3
Article 3	Architect Staff.....	7
Article 4	Schedule of Services	9
Article 5	Construction Cost Budget.....	9
Article 6	Fee and Method of Payment.....	10
Article 7	Payment for Extra Services or Changes.....	11
Article 8	Ownership of Data.....	11
Article 9	Termination of Contract	13
Article 10	Indemnity / Architect Liability	15
Article 11	Fingerprinting and Conduct on Project Site	16
Article 12	Responsibilities of the District.....	16
Article 13	Liability of District	17
Article 14	Nondiscrimination	17
Article 15	Insurance	17
Article 16	Covenant against Contingent Fees	17
Article 17	Entire Agreement/Modification.....	18
Article 18	Non-Assignment of Agreement.....	18
Article 19	Law, Venue.....	18
Article 20	Alternative Dispute Resolution	19
Article 21	Tolling of Claims.....	19
Article 22	Attorneys' Fees.....	19
Article 23	Severability	20
Article 24	Employment Status	20
Article 25	Certificate of Architect	21
Article 26	Cost Disclosure - Documents and Written Reports.....	21
Article 27	Notice & Communications.....	22
Article 28	Disabled Veteran Business Enterprise Participation.....	22
Article 29	District's Right to Audit.....	22
Article 30	Other Provisions	23
Article 31	Exhibits "A" through "H".....	24

EXHIBIT "A" – RESPONSIBILITIES AND SERVICES OF ARCHITECT	A-1
EXHIBIT "B" – CRITERIA AND BILLING FOR EXTRA SERVICES	B-1
EXHIBIT "C" – SCHEDULE OF SERVICES	C-1
EXHIBIT "D" – PAYMENT SCHEDULE	D-1
EXHIBIT "E" – INSURANCE REQUIREMENTS	E-1
EXHIBIT "F" – VACCINATION STATUS CERTIFICATION	F-1

AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services is made as of June 2, 2022, between the Sacramento City Unified School District, a California public school district ("District"), and Nacht & Lewis ("Architect") (collectively "Parties"), for the following project ("Project"):

Albert Einstein Middle School Core Academic Modernization

For and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Article 1. Definitions

- 1.1. In addition to the definitions above, the following definitions of words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The Architect identified in the first paragraph of this Agreement, including all Consultants to the Architect. The term Architect means the Design Professional in General Responsible Charge on this Project.
 - 1.1.3. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District's Contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction contractor(s) on a Conforming Set.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that the Division of the State Architect ("DSA") has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.

- 1.1.6. **Construction Budget**: The total amount of funds indicated by the District for the entire Project plus all other costs, including design, construction, administration, and financing.
- 1.1.7. **Construction Change Documents (“CCD”)**: The documentation of changes to the DSA-approved construction documents.
- 1.1.8. **Construction Cost Budget**: The total cost to District of all elements of the Project designed or specified by the Architect, as adjusted at the end of each design phase in accordance with this Agreement. The Construction Cost Budget does not include the compensation of the Architect and the Architect’s Consultants, the cost of land, rights-of-way, financing or other costs which are the responsibility of the District, including construction management.
- 1.1.9. **Construction Manager**: The District’s representative on the Project if the District retains a construction manager, project manager, or owner’s representative.
- 1.1.10. **Contractor**: One or more licensed contractors under contract with the District for construction of all or a portion of the Project.
- 1.1.11. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
- 1.1.12. **District**: The Sacramento City Unified School District.
- 1.1.13. **DSA**: The Division of the State Architect.
- 1.1.14. **Extra Services**: District-authorized services outside of the scope in **Exhibit “A”** or District-authorized reimbursable not included in Architect’s Fee.
- 1.1.15. **Laboratory of Record**: The District-designated laboratory(ies) for testing of concrete, soils, materials, and other required testing.
- 1.1.16. **Project**: District’s Property Project at 9325 Mirandy Drive, Sacramento, CA, 95826.
- 1.1.17. **Record Drawings**: A final set of drawings prepared by the Architect that incorporates all changes from all As-Builts, sketches, details, and clarifications. This includes a “1A” sheet.

- 1.1.18. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.19. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. Scope, Responsibilities, and Services of Architect

- 2.1. Architect shall render the Services described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed signed by the District representative. Architect's Services will be completed in accordance with the schedule attached as **Exhibit "C."**
- 2.2. Architect and its Consultants shall provide Services for the Project (i) using its professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects the size, scope and complexity of the Project for California school districts in or around the same geographic area of the District; (iii) the terms of this Agreement; and (iv) in accordance with said standards regarding application and interpretation of applicable law, code, rule or regulation at the time the Services are rendered ("Standard of Care"). All persons providing professional services hereunder shall be properly licensed as required by California law.
- 2.3. The District intends to award the Project to Contractor(s) pursuant to a competitive bid process. District reserves its right to use alternative delivery methods and the Architect's scope of work may be adjusted accordingly.
- 2.4. Architect acknowledges that all California public school districts are obligated to develop and implement the following storm water requirements for the discharge of storm water to surface waters from its construction and land disturbance activities where the project disturbs one (1) or more acres of land and is not part of a larger common plan of development or sale, the project disturbs one acre or more of land, or the project disturbs less than one (1) acre of land but is part of a larger common plan of development or sale, or where the District engages in maintenance (e.g., fueling, cleaning, repairing) or transportation activities.
- 2.4.1. Architect shall provide the design for the Project, without limitation:

- 24.1.1. A municipal Separate Storm Sewer System ("MS4"). An MS4 is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- 24.1.2. A Storm Water Pollution Prevention Plan ("SWPPP") that contains specific best management practices ("BMPs") and establishes numeric effluent limitations.
- 2.4.2. Architect shall conform its design work to the District's storm water requirements indicated above, that are approved by the District and applicable to the Project, at no additional cost to the District. In addition, as required Architect shall develop a grading and drainage plan and a site plan from architectural information showing a final development of the site. This drawing will also include a horizontal and vertical control plan and a utility infrastructure plan. The Services described in this subparagraph shall be provided by a professional civil engineer who contracts with or is an employee of the Architect.
- 2.5. Architect shall contract for or employ at Architect's expense, Consultant(s) to the extent deemed necessary for completion of the Project including, but not limited to: architects; mechanical, electrical, structural and civil engineers; landscapers; and interior designers, licensed as such by the State of California as part of the Basic Services under this Agreement. The names of Consultant(s) shall be submitted to the District for approval prior to commencement of Services, as indicated below. The District reserves the right to reject Architect's use of any particular Consultant. Nothing in the foregoing procedure shall create any contractual relationship between the District and any Consultant employed by the Architect under terms of the Agreement. Architect shall require each of the Consultants retained by it to execute agreements with standard of care and indemnity provisions commensurate with this Agreement, but Architect shall remain solely responsible and liable to District for all matters covered by this Agreement.
- 2.6. Architect shall coordinate with District personnel or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with State labor compliance, if any. If the Architect employs Consultant(s), the Architect shall ensure that its contract(s) with its Consultant(s) include language notifying the Consultant(s) of State labor compliance, if any.

- 2.7. Architect shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies, including, without limitation, the California Department of Education, the Office of Public School Construction, the Department of General Services, DSA, including DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety Section, the State Fire Marshal and any regulatory office or agency that has authority for review and supervision of school district construction projects.
- 2.7.1. If the Project is subject to DSA jurisdiction, then Architect, and its Consultants, if any, shall comply with all the DSA requirements, including without limitation, all the requirements included and/or referenced in the following forms, bulletins ("BU"), interpretations of regulations ("IR"), policies ("PL"), or procedures ("PR"):
- 2.7.1.1. DSA IR A-6, Construction Change Document Submittal and Approval Process.
 - 2.7.1.2. DSA IR A-18, Use of Construction Documents Prepared by Other Professionals.
 - 2.7.1.3. DSA IR A-24, Construction Phase Duties of the School District, Contractor and Design Professional.
 - 2.7.1.4. DSA PR 07-01: Pre-Check Approval Process.
 - 2.7.1.5. DSA PR 07-02: Over-The-Counter Review of Projects Using Pre-Check Approved Design.
 - 2.7.1.6. DSA PR 18-04.BB18: Electronic Plan Review for Design Professionals of Record Using Bluebeam 2018.
 - 2.7.1.7. DSA PR 18-09.BB18: Electronic Plan Review for Over-the-Counter ("OTC") Projects Using Bluebeam 2018.
 - 2.7.1.8. Form DSA PR 13-01, Construction Oversight Process.
 - 2.7.1.8.1. Each of Architect's duties as provided in the DIR Construction Oversight Process shall be performed timely so as not to result in any delay to the Project.
 - 2.7.1.9. Form DSA PR 13-02, Project Certification Process.

- 2.7.2. Notwithstanding the DSA forms, BUs, IRs, PLs, or PRs referenced anywhere in this Agreement, each of which is current as of the Effective Date, all Projects subject to DSA's jurisdiction shall be submitted for review, back check, and approval, under the electronic plan review process ("EPR process"), rather than paper submission, for all projects submitted to DSA. Architect, and its Consultants, if any, shall comply with the EPR process and related DSA procedures, including, without limitation, DSA PR 18-04.BB18 and DSA PR 18-09.BB18, and any subsequent or replacement procedures relating to the EPR process promulgated by DSA. Any reference herein to a particular DIR form, BU, IR, PL, or PR, shall mean and include the then-current DIR form, BU, IR, PL, or PR, respectively, and, to the extent that the EPR process has superseded such form or paper submission process, the EPR process then in effect shall control.
- 2.8. Architect shall provide Services as required to obtain any local, state and/or federal agencies' approval for on-site and off-site work related to the Project including review by regulatory agencies having jurisdiction over the Project.
- 2.9. Architect shall coordinate the work of the District's DSA project inspector(s) ("Project Inspector(s)") and the Laboratory of Record. Architect shall provide code required supervision of special inspectors not provided by the Laboratory of Record.
- 2.10. Architect shall give efficient supervision to Services, using its professional skill and attention. Architect shall carefully study and compare all contract documents, drawings, specifications, and other instructions ("Contract Documents") and shall at once report to District, Construction Manager, and Contractor, any error, inconsistency, or omission that Architect or its employees may discover, in writing, with a copy to District's Project Inspector(s). Architect shall have responsibility for discovery of errors, inconsistencies, or omissions in its own Contract Documents and that of its Sub consultants, but shall have no responsibility for District hired consultants.
- 2.11. Architect recognizes that the District may obtain the services of a Construction Manager and that Architect may have to assume certain coordination and management responsibilities, including tracking Requests for Information ("RFI"), providing RFI responses, and leading all coordination meetings between the District, Project Inspectors, and Contractors on the Project. The District reserves the right to retain the services of a Construction Manager at any time. The Construction Manager, if any, shall be authorized to give Architect Services authorizations and

issue written approvals and notices to proceed on behalf of District. The District reserves the right to designate a different Construction Manager at any time. Any task, including, but not limited to, reviews or approvals that the District may perform pursuant to this Agreement may be performed by the Construction Manager, unless that task indicates it shall be performed by the Governing Board of the District. In addition, the District may have a constructability review of Architect's design documents. Architect shall conform any design documents to the constructability review as part of the Services under this Agreement and shall not be entitled to any compensation as Extra Services for this activity.

- 2.12. Architect shall provide computer-generated pictures downloaded to computer files, updated as requested by the District, that the District may use on its website.
- 2.13. As part of the basic Services pursuant to this Agreement, Architect is not responsible for:
 - 2.13.1. Ground contamination or hazardous material analysis.
 - 2.13.2. Any asbestos and/or lead testing, design or abatement; however, it shall coordinate and integrate its work with any such information provided by District.
 - 2.13.3. Compliance with the California Environmental Quality Act ("CEQA"), except that Architect agrees to coordinate its work with that of any CEQA consultants retained by the District, to provide current elevations and schematic drawings for use in CEQA compliance documents, and to incorporate any mitigation measures adopted by the District into the Project design at no additional cost to the District.
 - 2.13.4. Historical significance report.
 - 2.13.5. Soils investigation.
 - 2.13.6. Geotechnical hazard report, except as indicated in **Exhibit "A."**
 - 2.13.7. Topographic surveys of existing conditions
 - 2.13.8. State and Local agency fees.
 - 2.13.9. Testing and inspection

Article 3. Architect Staff

3.1. Architect has been selected to perform the Services herein because of the skills and expertise of key individuals.

3.2. Architect agrees that the following key people in Architect's firm shall be associated with the Project in the following capacities:

Principal In Charge: Brian Maytum

Project Director: Brian Maytum

Project Architect(s): Chris Flatt

Major Consultants:

Electrical: The Engineering Enterprise

Low Voltage: KMM Services

Mechanical/Fire Sprinkler: Capital Engineering Consults.

Structural: Degenkolb

Civil: Warren Consulting Engineers

Landscape: MTW

Cost Estimating: Cummings

3.3. Architect shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel cease to be employed by Architect. In either case, the District shall be allowed to interview and approve replacement personnel.

3.4. If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice Architect shall have five (5) calendar days to remove that person from the Project and replace that person with one acceptable to the District. All lead or key personnel for any Consultant must also be designated by the Consultant and are subject to all conditions stated in this paragraph.

3.5. Architect represents that Architect 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 Services required under this Agreement and that no person having any such interest shall be employed by Architect.

3.6. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed

personnel shall be in "responsible charge" of persons who observe the construction.

Article 4. Schedule of Services

Architect shall commence Services under this Agreement upon receipt of a written Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the schedule in **Exhibit "C."** Time is of the essence and failure of Architect to perform Services on time as specified in this Agreement is a material breach of this Agreement. It shall not be a material breach if a delay is beyond the Architect's or its Consultant(s)' reasonable control.

Article 5. Construction Cost Budget

- 5.1. Architect hereby accepts the District's established Construction Cost Budget and Project scope. In accordance with **Exhibit "A,"** the Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase. The District and Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect.
- 5.2. Architect shall complete all Services as described in **Exhibit "A,"** including all plans, designs, drawings, specifications and other Contract Documents, so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget, as adjusted subsequently with the District's written approval. Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget.
- 5.3. The District may, in its sole discretion, do one, or a combination, of the following if any of the events in Article 5.4 occur:
 - 5.3.1. Give Architect written approval on an agreed adjustment to the Construction Cost Budget.
 - 5.3.2. Authorize Architect to re-negotiate, when appropriate, and/or re-bid the Project within three (3) months' time of receipt of bids (exclusive of District and other agencies' review time) at no additional cost to the District.

- 5.3.3. Terminate this Agreement if the Project is abandoned by the District, without further obligation by either party.
- 5.3.4. Within three (3) months' time of receipt of bids, instruct Architect to revise the drawings and specifications (in scope and quality as approved by the District) to bring the Project within the Construction Cost Budget for re-bidding at no additional cost to the District.
- 5.4. If any of the following events occur, the District may exercise any one, or any combination, of the actions set forth in Article 5.3 above:
 - 5.4.1. The lowest responsive base bid received is in excess of five percent (5%) of the Construction Cost Budget; or
 - 5.4.2. If the combined total of base bid and all additive alternates come in ten percent (10%) or more under the Construction Cost Budget; or
 - 5.4.3. If the Construction Cost Budget increases in phases subsequent to the Schematic Design Phase due to reasonably foreseeable changes in the condition of the construction market in the county in which the District is located, in so far as these have not been caused by Acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy.

Article 6. Fee and Method of Payment

- 6.1. The District shall pay Architect for all Services contracted for under this Agreement an amount equal to the following ("Fee"):

A fixed fee amount of \$652,500. The fee represents 8.2% of the proposed construction value of \$8,000,000.00.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and will be billed at a multiple of 1.10% the expenses incurred. These charges include, but are not limited to, expenses incurred which are directly related to the Project, such as reproductions, plans and plots for owner, agency or contractor's use, standard form documents, postage, handling and delivery of Instruments of Service, and mileage. Reimbursable expenses are not expected to exceed \$10,000. All reimbursable expenses must be pre-approved by District.
- 6.2. The District shall pay Architect the Fee pursuant to the provisions of **Exhibit "D."**

- 6.3. Architect shall bill for performance of Services under this Agreement in accordance with **Exhibit "D."**
- 6.4. No increase in Fee will be due from CCDs and/or change orders generated during the construction period to the extent caused by Architect's error or omission.
- 6.5. The Architect's Fee set forth in this Agreement shall be full compensation for all of Architect's Services incurred in the performance hereof as indicated in **Exhibit "D."**
- 6.6. Regardless of the structure of Architect's Fee, the Architect's Fee may be adjusted downward if the Scope of Services of this Agreement is reduced by the District in accordance with this Agreement.
- 6.7. Neither the District's review, approval of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for direct damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care under California law for architects performing similar work for California school districts in or around the same geographic area as the District.

Article 7. Payment for Extra Services or Changes

Any charges for Extra Services shall be paid by the District as described in **Exhibit "B"** only upon certification that the claimed Extra Service was authorized as indicated herein and that the Extra Services have been satisfactorily completed. If any service is done by Architect without prior written authorization by the Construction Manager or the District's authorized representative, the District will not be obligated to pay for such service. The foregoing provision notwithstanding, Architect will be paid by the District as described in **Exhibit "B"** for Extra Services that the Construction Manager or the District's authorized representative verbally requests, provided that Architect confirms such request in writing pursuant to the notice requirements of this Agreement, and proceeds with such Extra Services not earlier than two (2) business days after the District receives confirmation of the request from the Architect.

Article 8. Ownership of Data

- 8.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications,

estimates and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.

- 8.2. Architect retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Architect or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 8.3. Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting Technology ("CADD") (e.g., AutoCAD). Architect shall deliver to District all drawings in DWG format. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 8.4. In order to document exactly what CADD information was given to the District, Architect and District shall each date and sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. The District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Architect or its Consultant(s) subsequent to it being given to the District.
- 8.5. Following the termination of this Agreement, for any reason whatsoever, Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service"), which the District shall have the right to utilize in any way permitted by statute:
 - 8.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
 - 8.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
 - 8.5.3. One (1) set of non-fixed image CADD drawing files in DXF or DWG or both formats of the site plan, floor plans (architectural, plumbing, structural, mechanical and electrical), roof plan, sections and exterior elevations of the Project.

8.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Architect under this Agreement.

8.5.5. The obligation of Section 8.5 of this Agreement shall survive the termination of this Agreement for any reason whatsoever.

8.6. In the event the District changes or uses any fully or partially completed documents without Architect's knowledge or participation or both, the District agrees to release Architect of responsibility for such changes, and shall hold Architect harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Architect is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify Architect and its Consultants.

Article 9. Termination of Contract

9.1. District's Request for Assurances: If District at any time reasonably believes that Architect is or may be in default under this Agreement, District may in its sole discretion notify Architect of this fact and request written assurances from Architect of performance of Services and a written plan from Architect to remedy any potential default under the terms this Agreement that the District may advise Architect of in writing. Architect shall, within ten (10) days of District's request, deliver a written cure plan that meets the requirements of the District's request for assurances. Architect's failure to provide such written assurances of performance and the required written plan, within ten (10) days of request, will constitute a material breach of this Agreement sufficient to justify termination for cause.

9.2. District's Termination of Architect for Cause: If Architect fails to perform Architect's duties to the satisfaction of the District, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice the District for all Services performed until the notice of termination, but the District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions.

District may, at its discretion, provide the Architect time to cure its default or breach.

- 9.3. District's Termination of Architect for Convenience: District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination for convenience.
- 9.4. Architect's Termination of Agreement for Cause: Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement and fails to cure such material default within sixty (60) days of receipt of written notice of said defaults, or if the default cannot be cured within sixty (60) days, commence to cure such default, diligently pursue such cure, and complete the cure within a reasonable time following written notice and demand from Architect. Such termination shall be effective thirty (30) days after receipt of written notice from Architect to the District. Architect may invoice the District and the District shall pay all undisputed invoice(s) for Services performed until Architect's notice of termination.
- 9.5. Effect on Pre-Termination Services: Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 9.6. Ceasing Services upon Termination: If, at any time in the progress of the Design of the Project, the Governing Board of the District determines that the Project should be terminated, Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay Architect only the fee associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 9.7. Project Suspension: If the District suspends the Project for more than one hundred twenty (120) consecutive days, Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. Architect shall make every effort to maintain the same Project personnel after suspension. If the District suspends the Project for more than two (2) years, Architect may terminate this Agreement by giving written notice.

Article 10. Indemnity/Architect Liability

- 10.1. To the furthest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify and hold free and harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and members ("the Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim(s)") to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of the Architect, its directors, officers, employees, subcontractors, consultants, or agents, arising out or, connected with, or resulting from the performance of the Services, the Project, of this Agreement.. Architect, to the furthest extent permitted by California law, also has the duty to defend the Indemnified Parties from Claim(s) at Architect's own expense, including attorneys' fees and costs, however, in no event shall the cost to defend charged to the Architect exceed the Architect's proportionate percentage of fault. Notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. If a Claim arises out of, or relates in any way to the Services provided under this Agreement, upon the District's or the Architect's request, the District and the Architect agree to undertake good faith measures to allow the Architect to assist the District in resolving the dispute or litigation. The Architect's assistance, described as "Mandatory Assistance" in Exhibit A, Section B.8, shall be provided at Architect's own expense and excluded from any reimbursement calculation. At the commencement of the Mandatory Assistance Phase, District and Architect shall also negotiate in good faith as to the scope and extent of further assistance, including consideration of a joint defense agreement if appropriate. During the Mandatory Assistance Phase, each Party shall be responsible for their own attorneys' fees and costs incurred; however, each Party reserves its rights pursuant to Civil Code section 2782.8.
- 10.2. Architect shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim as defined in Article 10.1. These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.
- 10.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until such Claim(s) are barred by the applicable statute of

limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

Article 11. Fingerprinting

- 11.1. Pursuant to Education Code section 45125.2, the District has determined on the basis of scope of Services in this Agreement, that Architect, its Consultants and their employees will have only limited contact with pupils. Architect shall promptly notify the District in writing of any facts or circumstances which might reasonably lead the District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).
- 11.2. For all workers on District property, the Architect shall comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, the Architect and Architect's personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders.

Article 12. Responsibilities of the District

- 12.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 12.2. The District shall verbally or in writing advise Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 12.3. The District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters, which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and is not a Consultant of the Architect, the specifications shall include a note to the effect that the hazardous materials consultant's specifications are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the hazardous materials consultant's specifications related to

asbestos and lead paint survey and/or abatement documentation to the preparer of the hazardous materials consultant's specifications.

- 12.4. The District shall timely provide to the Architect all relevant information in its possession regarding the Project that is necessary for performance of Architect's services.

Article 13. Liability of District

- 13.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 13.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Architect, or by its employees, even though such equipment be furnished or loaned to Architect by District.

Article 14. Nondiscrimination

Architect 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 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 Architect and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).

Article 15. Insurance

- 15.1. Architect shall comply with the insurance requirements for this Agreement, set forth in **Exhibit "E."**
- 15.2. Architect shall provide certificates of insurance and endorsements to District prior to commencement of the work of this Agreement as required in **Exhibit "E."**

Article 16. Covenant against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.

Article 17. Entire Agreement/Modification

This Agreement, including the Exhibits attached hereto, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 18. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation or sublease without Architect's prior written consent shall be considered null and void. If an assignment is approved, this Agreement shall be binding on the successors and assign of the parties.

Article 19. Law, Venue

- 19.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 19.2. To the fullest extent permitted by California law, the county in which the District administration office is located shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Article 20. Alternative Dispute Resolution

- 20.1. All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice.
- 20.2. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Architect shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Architect's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Architect submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 20.3. Pending resolution of the dispute, Architect agrees it will neither rescind the Agreement nor stop the performance of the Services.

Article 21. Tolling of Claims

Architect agrees to toll all statutes of limitations for District's assertion of claims against Architect that arise out of, pertain to, or relate to Contractors' or subcontractors' claims against District involving Architect's work, until the Contractors' or subcontractors' claims are finally resolved.

Article 22. Attorneys' Fees

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of or performance under this Agreement, to terminate this Agreement, or to enforce, protect or establish any term or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as a part of the action or proceeding, reasonable attorneys' fees and court costs, including consultants' fees, attorneys' fees and costs for appeal, as may be fixed by the court. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

Article 23. Severability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Article 24. Employment Status

- 24.1. Architect shall, during the entire term of Agreement, be an independent contractor and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the District to exercise discretion or control over the professional manner in which Architect performs the Services that are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 24.2. Architect understands and agrees that Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee.
- 24.3. Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect, or any employee or Consultant of Architect, is an employee of the District for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.
- 24.4. Should a relevant taxing authority determine a liability for past services performed by Architect for the District, upon notification of such fact by the District, Architect shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).

- 24.5. A determination of employment status pursuant to the preceding two (2) paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Architect shall not be considered an employee of the District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect or its employees or Consultants was not an employee.
- 24.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 25. Certificate of Architect

- 25.1. Architect certifies that the Architect is properly certified or licensed under the laws and regulations of the State of California to provide the professional services that it has herein agreed to perform.
- 25.2. Architect certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 25.3. Architect certifies that it is aware of the provisions of California Labor Code and California Code of Regulations that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all requirements of the Prevailing Wage Laws, if applicable to Architect and its Consultants' professional services to be provided under this Agreement.

Article 26. Cost Disclosure - Documents and Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over five thousand dollars (\$5,000).

Article 27. Notice & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
ATTN: Chris Ralston, Director III, Facilities
EMAIL: chris-ralston@scusd.edu

Architect:

Nacht & Lewis Architects, Inc.
600 Q Street, Suite 100
Sacramento, CA 95818
ATTN: Brian Maytum, AIA, Vice
President and Principal

With a Copy to:

Dannis Woliver Kelley
200 California Street #400
San Francisco, CA 94111
ATTN: Deidree Sakai, Esq.

Any notice personally given shall be effective upon receipt. Any notice sent by electronic mail shall be effective the day after transmission. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

Article 28. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises (“DVBEs”) of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the “Act”). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hiring’s, Architect, before it executes the Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount(s) intended to be paid to DVBEs in conjunction with the contract, and documentation demonstrating Architect’s good faith efforts to meet these goals.

Article 29. District’s Right to Audit

29.1. District retains the right to review and audit, and the reasonable right of access to Architect’s and any Consultant’s premises to review and audit the Architect’s compliance with the provisions of this Agreement (“District’s Right”). The District’s Right includes the right to inspect, photocopy, and to

retain copies, outside of Architect's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

- 29.2. The District's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the District determines is necessary to discover and verify whether Architect is in compliance with all requirements of this Agreement.
- 29.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 29.4. Architect shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Architect shall make available to the District for review and audit all Project-related accounting records and documents and any other financial data. Upon District's request, Architect shall submit exact duplicates of originals of all requested records to the District.
- 29.5. Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 29.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

Article 30. Other Provisions

- 30.1. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 30.2. The individual executing this Agreement on behalf of Architect warrants and represents that she/he is authorized to execute this Agreement and bind the CM to all terms hereof.

- 30.3. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.
- 30.4. Architect shall issue a credit to the District as an offset to the Architect's Fee, an amount equal to fifty percent (50%) of the actual tax benefit derived by the Architect or its shareholders, after deducting associated tax consulting fees based on the Project per Internal Revenue Code section 179D (the Energy Efficient Commercial Buildings deduction).

Article 31. **Exhibits "A" through "H"** attached hereto are hereby incorporated by this reference and made a part of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Date: _____, 20__

By: _____

Title: Rose Ramos, Chief Business and Operations Officer

NACHT & LEWIS ARCHITECTS, INC.

Date: May 20, _____, 2022

By:  _____

Title: Brian Maytum, AIA, Vice President and Principal

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

TABLE OF CONTENTS

A.	SCOPE OF PROJECT	1
B.	BASIC SERVICES	1
C.	PRE-DESIGN AND START-UP SERVICES	4
D.	SCHEMATIC DESIGN PHASE	7
E.	DESIGN DEVELOPMENT PHASE	12
F.	CONSTRUCTION DOCUMENTS PHASE	16
G.	BIDDING PHASE	20
H.	CONSTRUCTION CONTRACT ADMINISTRATION PHASE	21
I.	CLOSE OUT PHASE	25
J.	MEETINGS / SITE VISITS / WORKSHOPS	Error! Bookmark not defined.

EXHIBIT "A"

RESPONSIBILITIES AND SERVICES OF ARCHITECT

Architect shall provide all professional services necessary for completing the following:

SCOPE OF PROJECT

Project Name: Albert Einstein Middle School Core Academic Modernization

Project Budget: \$8,000,000

BASIC SERVICES

Architect agrees to provide the Services described below:

1. Architect shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Architect under the Agreement as well as coordination with all master plans, studies, reports and other information provided by District. Architect shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
2. Architect will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance. Architect shall advise the District of the most effective methods of identifying and securing such information as part of each stage of design. Architect shall track for District's benefit all such suggested and disclosed information.
3. The District shall provide all information available to it to the extent the information relates to Architect's scope of work. This information shall include, if available,
 - a. As-builts;
 - b. Physical characteristics;
 - c. Legal limitations and utility locations for the Project site(s);
 - d. Written legal description(s) of the Project site(s);
 - e. Grades and lines of streets, alleys, pavements, and adjoining property and structures;

- f. Adjacent drainage;
- g. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
- h. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
- i. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
- j. Surveys, reports, as-built drawings, record drawings; and
- k. Subsoil data, chemical data, and other data logs of borings.

Architect shall Visually Verify this information and all existing Project utilities, including capacity, and document the location of existing utility lines, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by the District.

If Architect determines that the information or documentation the District provides is insufficient for purposes of design, or if Architect requires: a topographical survey; a geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other information that the District has not provided, then, at the soonest possible time after Architect has become aware that this additional information is needed, the Architect shall request that the District acquire that information. If the Parties mutually agree in writing, this additional information and service shall be procured through the Architect, who may invoice the District for those services as Extra Services.

- 4. **Technology Backbone.** Architect shall be responsible for the coordination of the design and the layout of the technology backbone system with the District's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Architect and Consultant(s) shall prepare and be responsible for documents prepared by the Architect based on the information provided by the District's technology consultant as appropriate to the level of design completion.
- 5. **District Standards.** Architect shall incorporate into its work and the work of all Consultants the adopted District standards for facilities and construction.

High Performance Schools. If the District adheres to the Collaborative for High Performance School (“CHPS”) Best Practice Standards, the Services provided by the Architect shall incorporate the CHPS Best Practice Standards and criteria to the extent feasible. CHPS and/or LEED project certification, including associated program fees and documentation, is not a part of Architect’s scope of services.

6. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Architect, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Architect's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation (“Mandatory Assistance”).

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

C. PRE-DESIGN AND START-UP SERVICES

1. Project Initiation

Upon final execution of the Agreement with the District, Architect shall:

- a. Within the first week following execution of the Agreement, review the proposed Schedule of Services set forth in **Exhibit "C"** to the Agreement and prepare a detailed scope of work list and work plan for documentation to the District's satisfaction. This scope of work list and work plan will identify specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Architect shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for review and approval by the District and by all regulatory agencies and additional definition of deliverables.
- b. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

2. Development of Architectural Program

Architect shall prepare for the District's review of an architectural program as follows:

- a. Perform pre-design investigations to establish appropriate guidelines around which and within which the Project is to be designed. Identify design issues relating to functional needs, directives and constraints imposed by regulatory codes. Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
- b. Review DSA codes pertaining to the proposed Project design.
- c. Identify design issues relating to functional needs, directives and constraints imposed by applicable regulatory codes.
- d. Based on survey and topography data provided by the District, input into computer and develop existing conditions base for the Schematic Design Phase.
- e. Administer Project as required to coordinate work with the District and among Consultants.

- f. Review District-provided standards for facilities and construction, including but not limited to designation of any material, product, thing or service by specific brand or trade name pursuant to Public Contract Code section 3400, subdivision (c).

3. **Construction Cost Budget**

- a. Architect shall have responsibility to further develop, review, and reconcile the Construction Cost Budget within the parameters of the Construction Budget established by the District for the Project. The estimates forming the basis of the Construction Cost Budget are to be based on the developed functional architectural program as approved by the District. The following conditions apply to the Construction Cost Budget prepared by the Architect:
 - (i) All costs are to be based on current bid prices, with escalation rate and duration clearly identified as a separate line item; rate of cost escalation and projected bid and construction dates are to be approved by the District and its representatives.
 - (ii) Format shall be estimated space use square foot costs (classroom sq. ft. costs, office space, etc.
 - (iii) Contingencies for design, bidding, and construction are to be included as individual line items, with the percentage and base of calculation clearly identified.
 - (iv) Architect shall include all information and estimates from the District and/or the Construction Manager that are intended to be part of the Construction Cost Budget.
 - (v) One week prior to submittal of documents, Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
 - (vi) Mechanical, electrical, civil, landscape and estimating consultant(s) shall participate in the progress meeting as appropriate and shall provide input and feedback into the development of the Construction Cost Budget.
- b. The Construction Cost Budget will inform the District's Construction Budget for the Project. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.

4. **Presentation**

If requested, Architect, along with any involved consultant(s), shall present and review with the District and, if directed, with the District's Governing Board, the summary and detail of work involved in this Phase, including two-dimensional renderings of any proposed facility suitable for public presentation.

5. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District an electronic copy of the following items produced in this Phase:

- a. Architectural Program (include comparison between developed program and "model" program, include narrative explaining any substantial deviations);
- b. Site Plan;
- c. Revised Construction Cost Budget;
- d. Final Schedule of Services;
- e. Meeting Reports/Minutes from the Kick-off and other meetings; and
- f. Renderings, if requested by District.

6. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

D. SCHEMATIC DESIGN PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare for the District's review a Schematic Design Study, containing the following items as applicable to the Project scope, as follows:

1. Prepare and review with District staff a scope of work list and work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities of the Architect, required completion times necessary for the review and approval by the District and by pertinent regulatory agencies and additional definition of deliverables.
2. Review the developed work plan with the District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.
3. **Architectural**
 - a. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
 - b. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.
 - c. As applicable, identify proposed roof system, deck, insulation system, and drainage technique.
 - d. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.
 - e. Identify code requirements, include occupancy classification(s) and type of construction.
4. **Structural**
 - a. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists) with preliminary sizing identified.

- b. Identify foundation systems (including fill requirements, piles, caissons, spread footings) with preliminary sizing identified.

5. **Mechanical**

- a. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.
- b. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.
- c. Show selected system on drawings as follows:
 - (i) Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.
 - (ii) Location and preliminary sizing of all major equipment and duct work in allocated spaces.
 - (iii) Schematic piping.
 - (iv) Temperature control zoning.
- d. Provide design criteria to include the intent base of design for the Project.
- e. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

6. **Electrical**

- a. Calculate overall approximate electrical loads.
- b. Identify proposed electrical system for service, power, lighting, low voltage and communication loads, including proposed or planned additional buildings or other facilities on the Project site.
- c. Show system(s) selected on drawings as follows:
 - (i) Single line drawing(s) showing major distribution system.
 - (ii) Location and preliminary sizing of all major electrical systems and components including:

- (A) Load centers.
- (B) Main panels.
- (C) Switch gear.
- d. Provide design criteria to include the intent base of design for the Project.
- e. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

7. **Civil**

- a. Develop on and off site utility systems such as sewer, water, storm drain, firewater lines and fire hydrants.
- b. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades and drainage.
- c. Coordinate finish floor elevations with architectural site plan.

8. **Specifications**

Prepare outline specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Architect is to use District's standardized equipment/material list for new construction and modernization in development of the Project design and specifications. Architect shall review and comment on District's construction bid contracts and contract documents (the "Division 0" and "Division 1" documents) as part of its Services under the Agreement.

9. **Construction Cost Budget**

Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding Phase, the following conditions apply to the revised Construction Cost Budget:

- a. Schematic Estimates: This estimate consists of unit cost applied to the major items and quantities of work. The unit cost shall reflect the complete direct current cost of work. Complete cost includes labor, material, waste allowance, sales tax and subcontractor's mark-up.
 - (i) General conditions shall be applied separately. This estimate shall be prepared by specification section and summarized by the CSI categories.

- b. The estimate shall separate the Project's building cost from site and utilities cost. Architect shall submit to the District the cost estimating format for prior review and approval.
- c. Escalation: all estimates shall be priced out at current market conditions. The estimates shall incorporate all adjustments as appropriate, relating to mid-point construction, contingency, and cost index (i.e. Lee Saylor Index).
- d. The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
- e. Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
- f. At the end of this Phase, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.

10. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this phase, together with one (1) copy of each item in electronic format:

- a. Breakdown of Construction Cost Budget as prepared for this Phase;
- b. Meeting reports/minutes;
- c. Schematic Design Package with alternatives;
- d. Statement indicating changes made to the Architectural Program and Schedule;
and
- e. Copy of the DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

11. Presentation

- a. Architect shall present and review with the District the detailed Schematic Design.

- b. The Schematic Design shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.

12. **Meetings**

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

E. DESIGN DEVELOPMENT PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare from the accepted deliverables from the Schematic Design Phase, the Design Development Phase documents consisting of the following for each proposed system within Architect's scope of services:

1. Architectural

- a. Scaled, dimensioned floor plans with final room locations including all openings.
- b. 1/8" scale building sections showing dimensional relationships, materials and component relationships.
- c. Exterior elevations of all proposed new buildings, existing buildings to be renovated and all architectural elements of the Project.
- d. Identification of all fixed equipment to be installed in Project.
- e. Interior finishes identified and located within the rooms of all buildings.
- f. Site plan completely drawn with beginning notes and dimensions including grading and paving.
- g. Preliminary development of details and large scale blow-ups.
- h. Legend showing all symbols used on drawings.
- i. Floor plans identifying all fixed and major movable equipment and furniture.
- j. Further refinement of Outline Specifications for architectural, structural, mechanical, electrical, civil and landscape manuals, systems and equipment.
- k. Typical reflected ceiling development including ceiling grid and heights for each ceiling to be used, showing:
 - (i) Light fixtures.
 - (ii) Ceiling registers or diffusers.
 - (iii) Access Panels.

2. **Structural**

- a. Structural drawings with all major members located and sized.
- b. Establish final building and floor elevations.
- c. Preliminary specifications.
- d. Preliminary calculations for the structural systems including lateral force resistive systems, foundations, and all structural system components.
- e. Identify foundation requirement (including fill requirement, piles) with associated soil pressure, water table and seismic center.

3. **Mechanical**

- a. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- b. Major mechanical equipment should be scheduled indicating size and capacity.
- c. Ductwork and piping should be substantially located and sized.
- d. Plumbing plans for the Project shall indicate numbers and locations of fixtures and be in conformance with the code-mandated fixture count requirements of the Project.
- e. Devices in ceiling should be located.
- f. Legend showing all symbols used on drawings.
- g. More developed Outline Specifications indicating quality level and manufacture.
- h. Control Systems identified.
- i. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

4. **Electrical**

- a. All lighting fixtures should be located and scheduled showing all types and quantities of fixtures to be used, including proposed lighting levels for each usable space.
- b. All major electrical equipment should be scheduled indicating size and capacity.

- c. Complete electrical distribution including a one-line diagram indicating final location of switchboards, communications, controls (high and low voltage), motor control centers, panels, transformers and emergency generators, if required. Low-voltage system includes fire alarm system, security system, clock and public address system, bell system, voice-data system, and telecom/technology system.
- d. Legend showing all symbols used on drawings.
- e. More developed and detailed Outline Specifications indicating quality level and manufacture.
- f. Further evaluation and confirmation of the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

5. **Civil**

- a. Further refinement of Schematic Design Phase development of on and off site utility systems for sewer, electrical, water, storm drain and fire water. Includes, without limitation, pipe sizes, materials, invert elevation location and installation details.
- b. Further refinement of Schematic Design Phase roadways, walkways, parking and storm drainage improvements. Includes details and large scale drawings of curb and gutter, manhole, thrust blocks, paved parking and roadway sections.

6. **Bid Documents**

Architect shall review and comment on District's construction bid contracts and contract documents (the "Division 0" documents and "Division 1" documents) as part of its Services under the Agreement.

7. **Construction Cost Budget**

- a. Revise the Construction Cost Budget for the Project. Along with the conditions identified in the Agreement and the preceding Phases, the following conditions apply to the revised Construction Cost Budget:
 - (i) Design Development Estimate: This further revised estimate shall be prepared by specification section, summarized by CSI category and divided by trade and work item. The estimate shall include individual item unit costs of materials, labor and equipment. Sales tax, Contractor's mark-ups, and general conditions shall be listed separately.

- (ii) The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
 - (iii) At this stage of the design, the Construction Cost Budget may include design contingencies of no more than ten percent (10%) in the cost estimates.
- b. Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, the Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.

8. Deliverables and Numbers of Copies

Architect shall provide to the District a hard copy of the following items produced in this phase, together with one (1) copy of each item in electronic format:

- a. Design Development drawing set from all professional disciplines necessary to deliver the Project;
- b. Specifications;
- c. Revised Construction Cost Budget; and
- d. Copy of the DSA file, including all correspondence and meeting notes to date, or notification in writing that Architect has not met or corresponded with DSA.

The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the accepted Construction Cost Budget has been accepted and approved by the District at no additional cost to the District.

9. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

F. CONSTRUCTION DOCUMENTS PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall prepare from the accepted deliverables from the Design Development Phase the Construction Documents consisting of the following for each proposed system within Architect's scope of work. All Projects subject to DSA's jurisdiction shall be submitted for review, back check, and approval, under the electronic plan review process ("EPR process"), rather than paper submission.

1. Construction Documents – 100% / Completion Stage:

a. Architectural

- (i) Completed site plan.
- (ii) Completed floor plans, elevations, and sections.
- (iii) Architectural details and large blow-ups completed.
- (iv) Finish, door, and hardware schedules completed, including all details.
- (v) Site utility plans completed.
- (vi) Fixed equipment details and identification completed.
- (vii) Reflected ceiling plans completed.

b. Structural

- (i) Structural floor plans and sections with detailing completed.
- (ii) Structural calculations completed.

c. Mechanical

- (i) Large scale mechanical details complete.
- (ii) Mechanical schedules for equipment completed.
- (iii) Completed electrical schematic for environmental cooling and exhaust equipment.
- (iv) Complete energy conservation calculations and report.

d. **Electrical**

- (i) Lighting and power plan showing all switching and controls. Fixture schedule and lighting details completed.
- (ii) Distribution information on all power consuming equipment, including lighting, power, signal and communication device(s) branch wiring completed.
- (iii) All electrical equipment schedules completed.
- (iv) Special system components plans completed.
- (v) Electrical load calculations completed.

e. **Civil**

All site plans, site utilities, parking and roadway systems completed.

f. **Construction Cost Budget**

- (i) Revise the Construction Cost Budget for the Project. Along with the conditions identified in the preceding phases, Architect shall update and refine the fifty percent (50%) Construction Documents Phase revisions to the Construction Cost Budget.
- (ii) The Construction Cost Budget for the Project must at no point exceed the District's Construction Budget. The accuracy of the Construction Cost Budget shall be the responsibility of the Architect.
- (iii) Architect shall submit its proposed Construction Cost Budget to the District and the Construction Manager for review and approval. At that time, Architect shall coordinate with the District and the Construction Manager to further develop, review, and reconcile the Construction Cost Budget.
- (iv) At this stage of the design, the Construction Cost Budget shall not include any design contingencies in excess of the cost estimates.

g. **Specifications**

- (i) Complete development and preparation of technical specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

- (ii) No part of the specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless:
 - (A) The specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service, as required by Public Contract Code section 3400, or
 - (B) The designation is allowable by specific allowable exemptions or exceptions pursuant to Public Contract Code section 3400.
- (iii) Specifications shall not contain restrictions that will limit competitive bids other than those required for maintenance convenience by the District and only with District's prior approval.
- (iv) At one hundred percent (100%) review, District shall review the Specifications and shall direct Architect to make corrections at no cost to the District.
- (v) Coordination of the Specifications with specifications developed by other disciplines.
- (vi) Specifications shall be in CSI format.

h. Constructability Review

The District and/or its designee, at its sole discretion, shall have the right to conduct a constructability review of the Construction Documents. A report shall be given to the Architect who shall make necessary changes along with providing written comments for each item listed in the report. Conducting a constructability review does not excuse the Architect's obligation to provide Services that shall comply with professional architectural standards, including the standard of care applicable to architects designing public school facilities and applicable requirements of federal, state, and local law.

i. Deliverables and Numbers of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- (i) Working drawings;
- (ii) Specifications;
- (iii) Engineering calculations;

- (iv) Construction Cost Budgets;
- (v) Statement of requirements for testing and inspection of service for compliance with Construction Documents and applicable codes;
- (vi) Copy of DSA file including all correspondence, meeting, minutes or reports, back-check comments, checklists to date; and
- (vii) Statement indicating any authorized changes made to the design from the last Phase and the cost impact of each change on the previously approved Construction Cost Budget. If no design changes occur but shifts of costs occur between disciplines, identify for District review.

2. Construction Documents Final Back-Check Stage:

- a. The Construction Documents final back-check stage shall be for the purpose of the Architect incorporating all regulatory agencies' comments into the drawings, specifications, and estimate. All changes made by the Architect during this stage shall be at no additional cost to the District.
- b. The final contract documents delivered to the District upon completion of the Architect's work shall be the Bid Set and shall consist of the following:
 - (i) Specifications: Original word-processed technical specifications on reproducible masters in CSI format.
- c. Architect shall update and refine the Consultants' completed Contract Documents.
- d. Conclusion of Construction Document Phase requires final stamp-out by DSA.

3. Meetings

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a monthly basis.

G. BIDDING PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall perform Bidding Phase services for District as follows:

1. Contact potential bidders and encourage their participation in the Project.
2. Coordinate the development of the bidding procedures and the construction Contract Documents with the District.
3. The development of the bidding procedures and the construction Contract Documents shall be the joint responsibility of the District and Architect. Nevertheless, Architect will use all due care and diligence to confirm that its plans and specifications and all other information provided by or on behalf of the District to potential bidders discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance.
4. While the Project is being advertised for bids, all questions concerning intent shall be referred to the District for screening and subsequent processing through Architect.
5. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, those items shall be analyzed by the Architect for decision by the District as to the proper procedure required. Corrective action will be in the form of an addendum prepared by the Architect and issued by the District.
6. Attend bid opening.
7. Coordinate with Architect Consultants.
8. Respond to District and potential bidder questions and clarifications.
9. Deliverables and Number of Copies

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- a. Meeting report/minutes from the kick-off meeting;
- b. Meeting report/minutes from the pre-bid site walk; and
- c. Upon completion of the Bidding Phase, Architect shall produce a Conforming Set of plans and specifications incorporating all addenda issued thus far. Architect shall supply District with two (2) complete, reproducible sets of plans and specifications marked as a Conforming Set.

H. CONSTRUCTION CONTRACT ADMINISTRATION PHASE

Upon District's acceptance of Architect's work in the previous Phase and assuming District has not delayed or terminated the Agreement, Architect shall perform Construction Contract Administration Phase services for the District as follows:

1. Architect's responsibility to provide basic services for the Construction Phase under the Agreement commences with the award of the contract for construction and terminates upon satisfactory performance and completion of all tasks in this phase and commencement of the Closeout Phase or upon the District's terminating the Agreement, whichever is earlier.
2. **Construction Oversight and Project Certification Process**
 - a. Architect shall ensure that the Project Inspector is approved by the DSA for the Project by submitting the applicable Inspector's Qualification Record (form DSA 5 or more current version) to and by obtaining approval from the DSA prior to commencement of construction and prior to requesting issuance of project inspections cards (form DSA 152 or more current version).
 - b. Architect shall request issuance of the proper number of project inspection cards (forms DSA 152 or more current version) by electronically submitting form DSA 102-IC (or more current version) to the DSA after the construction contract has been awarded. Architect shall provide project inspection cards to the Project Inspector prior to commencement of construction.
 - c. Prior to commencement of construction, Architect shall provide (1) a copy of the DSA approved construction documents and (2) the DSA approved Statement of Structural Tests and Special Inspections (form DSA 103 or more current version) prepared by Architect to the Project Inspector and Laboratory of Record.
 - d. Architect shall prepare and submit a Contract Information form (form DSA 102 or more current version) for all construction contracts.
 - e. Architect shall maintain such personal contact with the Project as is necessary to assure themselves of compliance, in every material respect, with the DSA-approved construction documents. Personal contact shall include visits to the Project site by the Architect or engineer or their qualified representative to observe construction.
 - f. Architect shall notify DSA as to the disposition of materials noted on laboratory testing, and/or special inspection, reports as not conforming to the DSA-approved construction documents.
 - g. Architect shall respond to DSA field trip notes as necessary.

- h. Architect shall submit an interim Verified Report (form DSA 6-AE or more current version) to the DSA electronically and a copy to the Project Inspector for each of the applicable nine (9) sections of form DSA 152 prior to the Project Inspector signing off that section of the project inspection card.
- i. Architect shall submit a Statement of Final Actual Project Cost (form DSA 168 or more current version) to the DSA.
- j. Architect shall submit Verified Reports (form DSA 6-AE or more current form) to the DSA and to the Project Inspector if any of the following events occur: (1) when construction is sufficiently complete in accordance with the DSA-approved construction documents so that the District can occupy or utilize the Project; (2) work on the Project is suspended for a period of more than one month; (3) the services of the Architect are terminated for any reason prior to completion of the Project; or (4) DSA requests a Verified Report.

3. Change Orders

- a. Architect shall review all of Contractor's change order requests to determine if those requests are valid and appropriate. Architect shall provide a recommendation to District as to whether the change should be approved, partially approved, returned to the Contractor for clarification, or rejected.
- b. Architect shall furnish all necessary Construction Change Documents and additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. The District shall request these Construction Change Documents and drawings from the Architect, which shall be provided at no additional cost unless designated as Extra Services by the District. The original tracing(s) and/or drawings and contract wording for change orders shall be submitted to the District for duplication and distribution.

4. Submittals

- a. Architect shall review and approve or take other appropriate action upon Contractor's submittals such as: shop drawings, Project data, samples and Construction Change Documents, but only for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- b. Architect shall review Contractor's schedule of submittals and advise the District on whether that schedule is complete. Architect shall provide the District with proposed revisions to this schedule and advise the District on whether the District should approve this schedule.

- c. Architect's action upon Contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of Contractor(s), while allowing sufficient time in the Architect's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed twenty-one (21) calendar days from its receipt by the Architect. Architect's response to each submittal shall be a substantive and acceptable response. This twenty-one (21)-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce Architect's liability if it fails to prepare acceptable documents.
5. **RFIs.** During the course of construction as part of the basic services, Architect must respond to all Requests for Information ("RFI") as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed seven (7) calendar days from receipt by the Architect. Architect's response to each RFI shall be a substantive and acceptable response. This seven-day time period shall not include time when a submittal is within the District's control or if the submittal is being reviewed by DSA. In no way does this provision reduce the Architect's liability if it fails to prepare acceptable documents. Architect must verify that RFIs are passed through the Project Inspector, if any.
6. **Notices of Deficient Work.** On the basis of on-site observations, Architect shall keep the District informed of the progress and the quality of the work, and shall endeavor to guard the District against defects and deficiencies in the work. Architect shall timely notify the District in writing of any defects or deficiencies in the work by any of the District's Contractors that Architect may observe. However, Architect shall not be a guarantor of the Contractor's performance.
7. **As-Built Drawings.** Architect shall review and evaluate for District the Contractor(s)' documentation of the actual construction performed during the Project that the Contractor(s) should prepare and submit as As-Builts. As-Builts are documents that show the actual construction performed during the Project, including changes necessitated by Construction Change Documents and change orders, and detailed by the District's construction Contractor(s) on a Conforming Set.
8. **Record Drawings.** Architect shall incorporate all information on all As-Builts, sketches, details, and clarifications, and prepare one (1) set of final Record Drawings for the District. The Record Drawings shall incorporate onto one (1) set of drawings, all changes from all As-Builts, sketches, details, and clarifications, including, without limitation, all requests for information, Construction Change Documents and change orders based upon the construction Contractor's representations of actual construction. Architect shall deliver the Record Drawings to the District at completion of the construction in a format acceptable to the District, and it shall be a condition precedent to the District's approval

of Architect's final payment. Architect may insert the following notice on the Record Drawings:

These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Architect has provided a review consistent with its legal standard of care.

9. **O&M Manuals and Warranties.** Architect shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.
10. **Start-up.** Architect shall also provide, at the District's request, architectural/engineering advice to the District on start-up, break-in, and debugging of facility systems and equipment, and on apparent deficiencies or defects in construction following the acceptance of the Contractor's work.
11. **Payment Statements.** Recommendations of Payment by Architect constitute Architect's representation to the District that work has progressed to the point indicated to the best of Architect's knowledge, information, and belief, and that the quality of the work is in general conformance with the Contract Documents.

12. **Deliverables and Number of Copies**

Within thirty (30) days of the end of this Phase, Architect shall provide to the District a hard copy of the following items produced in this Phase, together with one (1) copy of each item in electronic format:

- a. Meeting report/minutes from the kick-off meeting;
- b. Observation reports; and
- c. Weekly meeting reports.

13. **Meetings**

During this Phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops minimally on a bi-weekly basis.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

I. CLOSE OUT PHASE

1. As the Construction Administration Phase progresses, Architect shall perform the following Close Out Phase services for the District as required in a timely manner:
 - a. Architect shall review the Project and observe the construction as required to determine when the Contractor has completed the construction of the Project and shall prepare punch lists of items that remain in need of correction or completion.
 - b. Architect shall collect from the Contractor, review, and forward to the District all written warranties, operation manuals, and spare parts with Architect's recommendation as to the adequacy of these items.
 - c. Architect shall prepare or collect, as applicable, and provide to DSA, all reports required by DSA related to the design and construction of the Project.
 - d. Architect shall respond to the DSA "90-day" letter.
 - e. Architect shall obtain all required DSA approval of all Construction Change Documents and addenda to the Contractor's contract.
 - f. Architect shall prepare a set of As-Built Drawings for the Project, as required by the District.
 - g. Architect shall review and prepare a package of all warranty and O&M documentation.
 - h. Architect shall organize electronic files, plans and prepare a Project binder.
 - i. Architect shall have primary responsibility to coordinate all Services required to close-out the design and construction of the Project with the District and among Consultants.
2. When the design and construction of the Project is complete, the District shall prepare and record with the County Recorder a Notice of Completion for the Project.
3. **Deliverables and Number of Copies**
 - a. Punch list; and
 - b. Upon completion of the Project, all related Project documents, including As-Builts and Record Drawings. These are the sole property of the District.

4. Meetings

During this phase, Architect shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as needed.

EXHIBIT "B"

CRITERIA AND BILLING FOR EXTRA SERVICES

The following Extra Services to the Agreement shall be performed by Architect if needed and if authorized or requested by the District:

- A. Providing services as directed by the District that are not part of the Basic Services of this Agreement, or otherwise included within **Exhibit "A."**
- B. Providing deliverables or other items in excess of the number indicated in **Exhibit "A."** Before preparing, providing, sending, or invoicing for extra deliverables, Architect shall inform the District that expected deliverables may be in excess of the number indicated in **Exhibit "A,"** so that the District can procure the additional deliverables itself or direct Architect to procure the deliverables at the District's expense or on the District's account at a specific vendor.
- C. Making revisions in drawings, specifications, or other documents when such revisions are required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Conforming Set.
- D. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of that work.
- E. Providing services made necessary by the default of Contractor(s).
- F. In the absence of a final Certificate of Payment or Notice of Completion, providing services more than ninety (90) days after the date of completion of work by Contractor(s) and after Architect has completed all of its obligations and tasks under the Agreement.
- G. Providing services as an expert and/or witness for the District in any mediation, arbitration, and/or trial in which the Architect is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.
- H. The following rates, which include overhead, administrative cost, and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the term of the Agreement.

Job Title	Hourly Rate
Principal In Charge:	\$345.00
Associate Principal:	N/A
Project Manager:	\$225.00
Designer:	\$175.00
Project Architect	\$200.00
Sr. Project Architect	\$220.00
Contract Administrator:	\$115.00
Project Coordinator	\$175.00
Sr. Design Technician	\$160.00
Design Technician	\$130.00

Graphic Designer	\$130.00

- I. The mark-up on any approved reimbursable item of Extra Services shall not exceed five percent (5%).
 - 1. The following items are approved for mark-up:
 - a. Sub-consultant Invoices.
 - 2. Any approved item of Extra Services not identified in the above list may not be marked-up.

J. **Format and Content of Invoices** (Extra Services Only)

Architect acknowledges that the District requires Architect’s invoices to include detailed explanations of the Services performed. For example, a six hour charge for “RFIs and CORs” is unacceptable and will not be payable. A more detailed explanation, with specificity, is required. This includes a separate entry for each RFI, PCO, CCD and change order. For example, the following descriptions, in addition to complying with all other terms of this Agreement, would be payable. The times indicated below are just placeholders:

Review RFI 23; review plans and specifications for response to same; prepare responses to same and forward to contractor, district, construction manager, and project inspector.	0.8 hours
Review COR 8; review scope of same and plans and specifications for appropriateness of same; prepare draft change order and language for same.	0.7 hours
Review COR 11; review scope of same and plans and specifications for appropriateness of same; prepare rejection of COR 11 for review by district, CM, IOR.	1.2 hours

END OF EXHIBIT

EXHIBIT "C"

SCHEDULE OF SERVICES

- A. Promptly after the execution of this Agreement, Architect shall prepare and submit for approval to the District a Schedule of Services showing the order in which Architect proposes to carry out Architect's Services ("Schedule of Services"). The Schedule of Services shall apply to the completion of all Services listed hereunder within the times established by this Agreement. The Schedule of Services shall be in the form of a progress chart clearly delineating all important increments and review dates. Architect shall update the Schedule of Services on a monthly basis and one (1) electronic copy to the District along with the monthly billing.
- B. Architect shall complete Services required under the Development of Architectural Program section within approximately **90 calendar days** after written authorization from the District to proceed. (June 1 – September 1, 2022)
- C. Architect shall complete Services required under the Schematic Design Phase within **60 calendar days** after written authorization from District to proceed. (September 1 – November 1, 2022)
- D. Architect shall complete Services required under the Design Development Phase within approximately **60 calendar days** after receipt of a written authorization from District to proceed. (November 1, 2022 – January 1, 2023)
- E. Architect shall complete Services required under Construction Documents Phase within **150 calendar days (5 months)** after written authorization from District to proceed, and as more specifically indicated below. Excluded from this duration is the time associated with DSA review the Construction Documents back-check stage.
 - 1. 100% Submittal Package to DSA **150 calendar days**
(January 1, 2023 – June 1, 2023)
 - 2. Final Contract Documents after Final Back-Check Stage **Anticipated approval date: November 2023**
- F. The durations stated above include the review periods of 10 **calendar days** required by the District.
- G. All times to complete tasks set forth in this Exhibit are of the essence, as indicated in the Agreement. If delays in the Schedule of Services are incurred as a result of the District's inability to comply with requested meeting schedules, Architect shall maintain the right to request an adjustment in the Schedule of Services if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, those extensions shall be authorized in writing by the District.

END OF EXHIBIT

EXHIBIT "D"

PAYMENT SCHEDULE

A. Compensation

1. The payment of consideration to Architect as provided herein shall be full compensation for all of Architect's Services incurred in the performance hereof, including, printing and shipping of deliverables in the quantities set forth in **Exhibit "A,"** Except as expressly set forth in the Agreement and **Exhibit "B,"** there shall be no payment for extra costs or expenses.
2. The total compensation to Architect shall be as stated in Article 6 of the Agreement.
3. District shall pay Architect as follows for all Services contracted for under this Agreement:

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design/Architectural Program Development Phase	<u>2.5%</u>
Schematic Design Phase	<u>10%</u>
Design Development Phase	<u>15%</u>
Construction Documents Phase-Submittal to DSA	<u>27.5%</u>
Approval by DSA	10%
Bidding Phase	<u>2%</u>
Construction Contract Administration Phase	<u>23%</u>
Close Out Phase	<u>10%</u>
Generate Punch List	2%
Sign Off On Punch List	2%
Receive and Review All M & O Documents	2%
Filing All DSA Required Close Out Documents	2%
Receiving DSA Close Out, including DSA approval of the final set of Record Drawings	2%
TOTAL BASE COMPENSATION	<u>100%</u>

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and will be billed at a multiple of 1.10% the expenses incurred. These charges include, but are not limited to, expenses incurred which are directly related to the Project, such as reproductions, plans and plots for owner, agency or contractor's use, standard form documents, postage, handling and delivery of Instruments of Service, and mileage. Reimbursable expenses are not expected to exceed \$10,000.

B. Method of Payment

1. Invoices shall be on a form approved by the District and are to be submitted to the District via the District's authorized representative.
2. Architect shall submit to District on a monthly basis documentation showing proof that payments were made to its Consultant(s).
3. Architect shall submit to the District for approval a copy of the Architect's monthly pay request format.
4. Upon receipt and approval of Architect's invoices, the District agrees to make payments of undisputed amounts within thirty (30) days of receipt of the invoice as follows:

a. Pre- Design/Architectural Program Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Pre-Design/Architectural Program.

b. For Schematic Design Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Schematic Design Phase by the District.

c. For Design Development Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Design Development Phase by the District.

d. For Construction Documents Phase:

Monthly payments for percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon acceptance and approval of the Construction Documents Phase by the District.

e. For Bidding Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon the District's award of the bid.

f. For Construction Contract Administration Phase:

Monthly payments for the percentage of all Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon the District's notice of completion.

g. For Close Out:

Lump sum payment no sooner than thirty-five (35) days and no later than forty-five (45) days after completion of all items in this Phase.

END OF EXHIBIT

EXHIBIT "E"

INSURANCE REQUIREMENTS

- A. Architect shall procure, prior to commencement of the Services of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Architect, his agents, representatives, employees and Consultant(s). Architect's liabilities, including but not limited to Architect's indemnity or defense obligations, under this Agreement shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Architect's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated by the District as a material breach of contract.
- B. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as the following scopes and limits. Umbrella or Excess Liability policies are acceptable where the need for higher liability limits is noted and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and other liability coverage (except Professional Liability) designated under this Section B – Insurance Requirements." Minimum Scope of Insurance:
1. **Commercial General Liability.** Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. **Commercial Automobile Liability.** One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 3. **Workers' Compensation Liability.** For all of the Architect's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Architect shall keep in full force and effect, a Workers' Compensation policy.
 4. **Employers' Liability.** For all of the Architect's employees who are subject to this Agreement, Architect shall keep in full force and effect, an Employment Practices Liability policy with minimum liability coverage of two million dollars (\$2,000,000) per occurrence.
 5. **Professional Liability.** This insurance shall cover the prime design professional and his/her consultant(s) on a Claims Made basis for two Million Dollars (\$2,000,000) aggregate limit subject to no more than two hundred thousand dollars (\$200,000) per claim deductible, coverage to continue through completion of construction plus two (2) years thereafter.

- C. District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- D. **Deductibles and Self-Insured Retention:** Architect shall inform the District in writing if any deductibles or self-insured retention exceeds two hundred thousand dollars (\$200,000). At the option of the District, either:
1. The District can accept the higher deductible;
 2. Architect's insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officers, officials, employees and volunteers; or
- E. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Architect; Instruments of Service and completed operations of the Architect; premises owned, occupied or used by the Architect; or automobiles owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
 2. For any claims related to the projects, Architect's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Architect's insurance and shall not contribute with it.
 3. Architect shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
 4. Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
 6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
 7. Architect shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Architect fails to

maintain insurance, District may take out comparable insurance, and deduct and retain amount of premium from any sums due Architect under the Agreement.

8. Architect shall require all sub consultants to maintain the level of insurance Architect deems appropriate with respect to the consultant's scope of the Work unless otherwise indicated in the Agreement. Architect shall cause the sub consultants to furnish proof thereof to District within ten (10) days of District's request. Should Architect not require sub consultants to provide the same level of insurance as is required of Architect, as provided in this Agreement, Architect is not relieved of its indemnity obligations to District or fulfilling its insurance requirements as provided in this Agreement.
- F. **Acceptability of Insurers:** Insurance is to be placed with insurers admitted in California with a current A.M. Best's rating of no less than A: VII. Architect shall inform the District in writing if any of its insurer(s) have an A.M. Best's rating less than A: VII. At the option of the District, the District may either:
1. Accept the lower rating; or
 2. Require Architect to procure insurance from another insurer.
- G. **Verification of Coverage:** Prior to commencing with its provision of Services under this Agreement, Architect shall furnish District with:
1. Certificates of insurance showing maintenance of the required insurance coverages; and
 2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverages on its behalf. All endorsements are to be received and approved by the District before Services commence.
- H. **Copy of Insurance Policy(ies):** Upon the District's request, Architect will furnish District with a copy of all insurance policies related to its provision of Services under this Agreement.

END OF EXHIBIT

EXHIBIT "F"

**VACCINATION STATUS CERTIFICATION
(Consultant)**

Consultant/Company Name: [Nacht & Lewis Architects, Inc.](#)

Pursuant to the provision of the State Public Health Officer Order issued on August 11, 2021 (Order of the State Public Health Officer Vaccine Verification for Workers in Schools) individuals that are working on school district property are required to be fully vaccinated and provide proof of vaccination or must be tested once weekly with either PCR testing or antigen testing.

A person is considered fully vaccinated for COVID-19: two weeks (14 days) or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson). Unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

Consultant currently has a contract with District under which Consultant provides services and accesses District property in the course and scope of performing its contract.

By signing below, Consultant hereby certifies that its employees/staff, whether paid or unpaid, and subconsultants, who will access any District location are either fully vaccinated and have provided Consultant with proof of vaccination from a permitted source or such employees/staff and subconsultants will comply with weekly testing requirements as outlined in the State Public Health Officer Order prior to entering District property on and after October 15, 2021.

Records of vaccination verification and testing results will be made available upon District's request or that of the County Health Officer for purposes of case investigation.

In addition, Consultant shall, while accessing District sites, remain in compliance with all current District policies and procedures associated with COVID-19 safety. The Consultant agrees to strictly, and without exception, follow all local, state, and federal guidelines regarding human protection from COVID-19 (the "Guidelines") while accessing District sites. The Guidelines to strictly follow are located at various sites, including, but not limited to:

- a) <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- b) <https://covid19.ca.gov/>
- c) <https://www.smchealth.org/>

I acknowledge that this certification, upon receipt and acceptance by the District, hereby supplements and amends and is hereby incorporated by reference into Consultant's existing contract with the District, that continued compliance with the matters described herein is a condition for continuation of that contract and that failure to adhere to these requirements constitutes a breach of contract resulting in consequences including, without limitation, contract termination. I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Consultant to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Executed this 20th day of May, 2022 at Sacramento, California.

By: Brian J. Maytum, AIA Signature: 

Title: Principal / Vice-President

Please submit this completed/signed certification by email to _____, at _____, with the executed Agreement.

Services may be suspended if this certification is not returned prior to performing services within the scope of this Agreement on District property.

END OF EXHIBIT



Sales Agreement

Introduction

BOOKNOOK

548 Market St PMB 98100
San Francisco, CA 94104



A letter from our founder and CEO

To Our Partners in Education,

We are pleased to submit this proposal and do so with great optimism about the future success of your students and teachers. Thank you for the opportunity to explore working together.

The BookNook team comprises educators and tutors, instructional designers, researchers, and technology developers who come from all walks of life, bringing a vast array of experiences and expertise. We celebrate this diversity while maintaining a unified commitment to ensuring that our partners benefit from exceptional teaching, research-based curricula, and world-class support.

We are proud to serve hundreds of thousands of students through high-impact tutoring, virtual small group instruction, and student-centered instructional materials for use in the classroom. However, for all that we have achieved, we have never wavered in our commitment to serving every student, each in their unique way. Likewise, we are humbled to work alongside any and every teacher, serving as supporting players in their central, mission-critical role in a time when teachers need it most.

Now, perhaps more than ever, schools and districts need - and deserve - providers that understand the nuanced needs of teachers and students, have a demonstrated commitment to delivering high-quality instruction, and bring a proven track record of improving outcomes. BookNook brings that to every partner engagement, and we hope that continues in our work with you and your team.

With a deep sense of humility, I want to express my gratitude on behalf of the 100+ associates at BookNook working tirelessly to improve education.



Thank you for the opportunity to engage in this work.

Sincerely,

MICHAEL LOMBARDO

CEO, BookNook

Why BookNook

WE ARE a team of educators, instructional designers, and technology innovators joined by a shared commitment to delivering equitable access to rigorous, engaging, and highly personalized instruction.

WE OFFER high-impact, one-on-one or small group tutoring and standards-aligned curriculum that accelerate learning for all students by meeting the unique needs of each.

BECAUSE students and teachers deserve easy, equitable access to high-impact instruction.



K-8 synchronous small-group reading instruction and high-impact tutoring

KEY COMPONENTS

At the heart of BookNook is our belief in collaborative learning. Students and educators work knee-to-knee, or virtually, to complete multi-sensory guided reading lessons together. Each BookNook lesson engages students with diverse text, dynamic activities, and meaningful discussion with a live instructor.



SYNCHRONOUS

Our patented platform automatically syncs devices providing a collaborative student-teacher experience whether in-person, remote, or hybrid.



RIGOROUS

Based on the Science of Reading, our standards-aligned supplemental curriculum was crafted to maximize literacy skills in optimal time-frames.



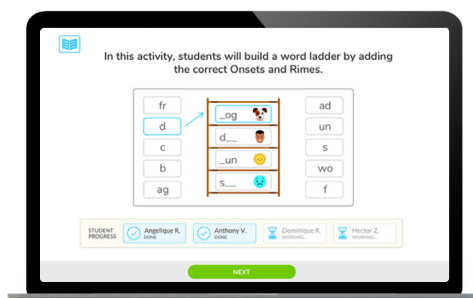
INTUITIVE

Each lesson provides thoughtful support at every step of the process allowing, teachers, paraprofessionals, and after-school staff to feel confident leading instruction.

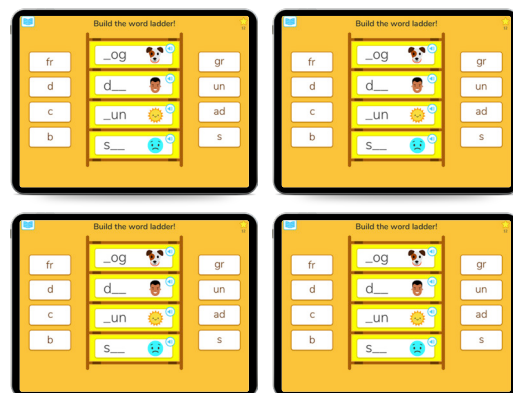
SYNCHRONOUS PLATFORM

Embedded with standards aligned supplemental curriculum

TEACHER VIEW

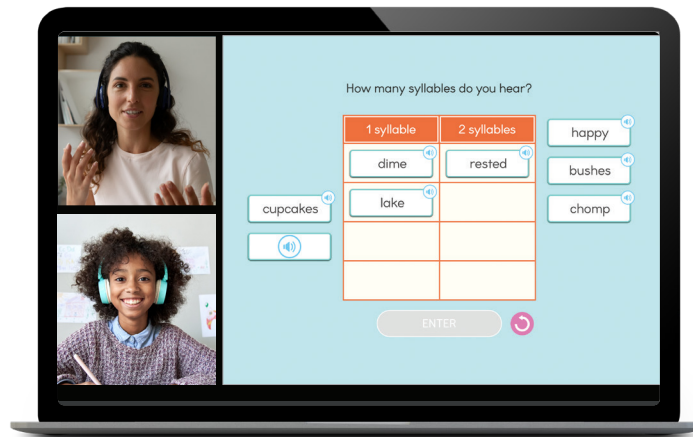


STUDENT VIEW



COMPREHENSIVE VIRTUAL TUTORING SERVICE

Expanding your team to reach more students with quality instruction



THOUSANDS OF QUALIFIED TUTORS

BookNook tutors work in school districts, after school programs, and community organizations to not only extend teaching opportunities beyond the standard school day, but also by personalizing the teaching and learning experience for every student, every day.



CONNECTION TO CLASSROOM INSTRUCTION:

BookNook Tutoring offers curriculum-based instruction rather than homework help, with lessons aligned to standards and students' reading levels, and easy-to-interpret performance data that keeps classroom teachers up to date on student progress.



SCALE QUICKLY:

BookNook's nationwide network of thousands of tutors empowers even the largest school districts to quickly deliver tutoring at scale.



TURNKEY SOLUTION:

BookNook streamlines the ability to source and schedule tutors, obtain background checks and issue payroll, utilize research-based and standards-aligned lessons, and match tutors to students for each instructional cycle. There is no other tutoring partner in education that brings both the platform and the people behind it.



DEDICATED TUTOR:

Students are matched with a dedicated tutor for the duration of their 12-24 week instructional program, which helps them learn under the guidance of a caring adult who understands their needs.

The truth is in the numbers

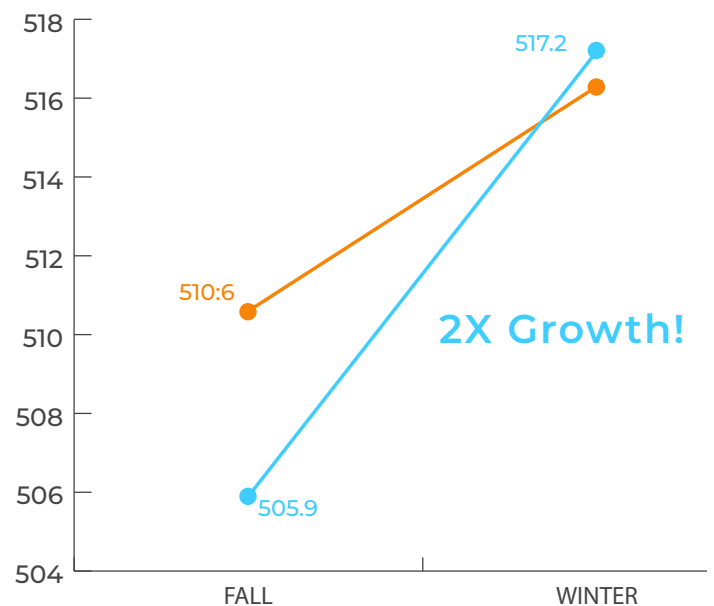
OUR RESULTS

As a student-centered company with a mission to address equity in education, BookNook is very focused on driving meaningful and measurable academic growth. The company both tracks student achievement in real time through data automatically collected by its platform and also periodically engages external university evaluators to access school district data sets to further validate efficacy.

The most recent of these was conducted by Teachers College at Columbia University and examined outcomes for the company's largest customer at the time, Prince George's County Public Schools. Researchers found that students tutored by BookNook made 40% more growth on teacher-administered assessments than similar students who did not receive tutoring, putting the company at a strong, ESSA Tier III level of data evidence—the first and only virtual tutoring program to meet this rigorous federal standard.

Prince George's County Case Study 2021

DIFFERENCES IN iREADY SCORES: FALL TO WINTER



BN High Usage Growth: +11.3
Non-BN Growth: +5.7

- Performed by: Consortium for Policy Research in Education (CPRE), at Teachers College, Columbia University
- Strong, ESSA Tier III data evidence



My 4th grader loves his BookNook tutoring sessions. His teacher is friendly, nice, and very engaging. During most of the school day, he prefers to keep his camera off, however, during his tutoring sessions his camera is on and he is actively participating. The sessions are only 30 minutes which is just the right amount of time. I was worried that more online learning would be a burden but he actually enjoys it.



YAMALA ROBINSON
PGCPS Parent



BookNook Tutoring Services Agreement

This Services Agreement (this “Agreement”) is entered into as of June 13, 2022 (the “Effective Date”) by and between BookNook, Inc., a Delaware corporation, having its principal office at 548 Market St, PMB 98100, San Francisco, California 94104-5401 US, (“BookNook”), and Sacramento City Unified School District, having its principal office at 5735 47th Avenue, Sacramento, CA 95824 (“Customer”).

This Agreement governs Customer’s acquisition of, and use of, the BookNook Solution and related services, as well as BookNook’s provision of the BookNook Solution and related services. The parties hereby agree as follows:

1. Definitions.

In addition to terms defined elsewhere in this Agreement, the following capitalized terms will have the meanings set forth in this Section 1.

- 1.1 “**Authorized Student**” means a student attending a Customer-designated school for whom Customer has purchased the right to use the BookNook Solution.
- 1.2 “**BookNook Solution**” means BookNook’s proprietary products and services that are set forth on each Order Form and provided to Customer hereunder.
- 1.3 “**Customer Materials**” means Customer’s trademarks and logos provided to BookNook by Customer (if any), and any other materials, data, and similar information, owned or licensed by Customer that are provided by Customer to BookNook in connection with Customer’s use of the BookNook solution. For the sake of clarity, Resultant Data shall not be deemed to be Customer Materials.
- 1.4 “**Documentation**” means the manuals, instructions, documentation and other documents or materials that BookNook makes generally available to its customers and the specific documentation that BookNook provides to Customer hereunder.
- 1.5 “**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose of which is to: (i) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any: (a) computer, software, firmware, hardware, system or network, or (b) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby; or (ii) prevent Customer from accessing or using the BookNook Solution as intended by this Agreement. Harmful Code does not include any means that BookNook uses to disable access to the BookNook Solution automatically or with the passage of time (such as a license key).
- 1.6 “**Intellectual Property Rights**” means all patent, copyright (including in both published and unpublished works, registrations and applications therefor), trade secret and rights in know-how, trademark, business domain names, designs, and other proprietary and intellectual property rights recognized in any jurisdiction worldwide, including moral rights.



BookNook Tutoring Services Agreement

- 1.7 “**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- 1.8 “**Open Source Component**” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.
- 1.9 “**Order Form**” means a quote, statement of work or other ordering document for certain BookNook products and services that is entered into between BookNook and Customer and that may contain mutually agreed upon additional terms, each of which are incorporated herein and governed by the terms of this Agreement. For the sake of clarity, a quote that is provided by BookNook to Customer and then signed by Customer shall be deemed to be an Order Form hereunder.
- 1.10 “**Resultant Data**” means any information, data and other content that is derived by, from or through Customer’s or an Authorized Users’ (as defined below) access or use of the BookNook Solution, including but not limited to, data and information regarding the provision, use and performance of various aspects of the BookNook Solution and related services.
- 1.11 “**Set-up Fees**” means up front payment at the time of contract execution for the Software, Clever integration, and Program Launch to formally begin Services.
- 1.12 “**Tutoring Cost**” means payment for the scheduled tutoring sessions. A scheduled tutoring session is defined as a tutoring class provided to a student by a teacher arranged in advance according to the Order Form.

2. BookNook Solution.

- 2.1 BookNook Solution. Subject to Customer paying the Fees (as defined below) to BookNook and providing any time, materials and/or services required to be provided by Customer under the applicable Order Form, BookNook will provide the BookNook Solution to Customer during the Term (as defined below) and Customer, designated members of Customer’s staff and each Authorized Student (collectively, “Authorized Users”) may use the BookNook Solution in accordance with the terms and conditions set forth in this Agreement.
- 2.2 Tutoring Sessions. In connection with Customer’s use of the BookNook Solution, Customer may purchase tutoring sessions (“Classes”) under the applicable Order Form, the volume and price of which will be set forth in the applicable Order Form. Customer hereby acknowledges and agrees that (i) all Classes may be provided via Zoom (or another similar U.S. provider), (ii) all Classes will be recorded (both audio and video) with appropriate permission obtained from parents or guardians, and (iii)



BookNook Tutoring Services Agreement

BookNook may use third-party tutors (each a “Tutor”) to provide the Classes. Unless otherwise agreed to in writing by BookNook, Customer’s initial Session may not be scheduled until after the date that is thirty (30) days from when Customer has paid the applicable Fees (as defined below) for the Classes it is purchasing under the applicable Order Form.

- 2.2.1 Enrollment of students in Tutoring Classes. It shall be the sole responsibility of the Customer to enroll students in the Tutoring Classes purchased under this Agreement. BookNook will support this process by creating an online enrollment, scheduling, and registration process for the Customer to use and will conduct reasonable follow up activities once parents/guardians of Authorized Students have begun the enrollment process. BookNook may also provide at Customer’s request other materials to support communications with parents/guardians for the purposes of enrollment, such as template social media postings and fliers in multiple languages. If mutually agreed on by the parties, BookNook will send text notifications to the parents or guardians of Authorized Students (either directly or indirectly by facilitating or assisting with Customer’s texting of such parents or guardians) to encourage parents to schedule Classes for Authorized Students (the “Text Campaign”). Customer will share the phone numbers of such parents and guardians with BookNook solely for the purpose of conducting the Text Campaign. Customer hereby expressly authorizes BookNook to carry out the Text Campaign as mutually agreed on by Customer and BookNook.
- 2.2.2 Launch of Tutoring Sessions. Customer acknowledges that BookNook will require completion of certain steps (“Launch Requirements”) by Customer in order for BookNook to begin providing Tutoring Sessions under this Agreement. Such steps may include by way of example and not limitation, rostering of student accounts on the BookNook platform via Clever or a similar platform, providing access to formative reading assessment data for the purpose of establishing initial student benchmarks, completing any required background checks or medical clearances (e.g. tuberculosis, pertussis), and communications to parents/guardians for the purpose of student enrollment
- 2.2.3 Delay of Launch due to Customer. Once BookNook and Customer have agreed upon the Launch Requirements and schedule, it shall be the Customer’s responsibility to meet the Launch Requirements on the specified timeline. Customer acknowledges that any delay on Customer’s part in meeting the Launch Requirements may result in the delay of the launch of Tutoring Sessions and that Customer will not be eligible for any makeup sessions due to delay by Customer in meeting the Launch Requirements.
- 2.2.4 Rollover of unused Tutoring Classes. In the event that the Customer is unable to use all of the Classes purchased under this agreement due to insufficient student enrollment, BookNook will make such unused Classes available for future Tutoring Sessions in the following summer and/or school year. The total amount of Classes eligible for rollover shall not exceed twenty (20%) of the original Classes purchased and unused Classes may not be rolled over more than once.



BookNook Tutoring Services Agreement

- 2.2.5 Student attendance of Tutoring Sessions. If an Authorized Student fails to attend a scheduled Session, such Session will be deemed to have been completed so long as the Tutor attended the Session.
- 2.2.6 Tutor attendance of Tutoring Sessions. If a Session or Sessions are cancelled by BookNook or by an individual Tutor or are not completed by the Tutor for any reason, such Session will not be deemed to have been completed and Customer will be entitled to an equivalent number of make-up Sessions should the number of missed Sessions exceed one (1) per each set of Classes under this agreement.
- 2.3 Support and Maintenance. In exchange for the Fees set forth on each Order Form, and in addition to the support and maintenance services specified in the applicable Order Form (if any), BookNook will use commercially reasonable efforts to provide reasonable support and maintenance services for the BookNook Solution.
- 2.4 Restrictions. In addition to any restrictions set forth in each Order Form, Customer will not, and will ensure that its Authorized Users do not, except as this Agreement expressly permits: (i) copy, modify or create derivative works or improvements of the BookNook Solution; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the BookNook Solution or any part thereof to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the BookNook Solution, in whole or in part; (iv) bypass or breach any security device or protection used by the BookNook Solution; (v) input, upload, transmit or otherwise provide to or through the BookNook Solution, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (vi) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the BookNook Solution or BookNook's provision of products and services to any third party, in whole or in part; (vii) remove, delete, alter or obscure any copyright, trademark, patent or other intellectual property or proprietary rights notices from any BookNook Solution, including any copy thereof; (viii) access or use the BookNook Solution in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable law; (ix) access or use the BookNook Solution for purposes of competitive analysis of the BookNook Solution, the development, provision or use of a competing software service or product or any other purpose that is to the BookNook's detriment or commercial disadvantage; (x) otherwise access or use the BookNook Solution beyond the scope of the authorization granted under this Agreement; or (xi) permit any third party to do any of the foregoing.
- 2.5 Changes. BookNook reserves the right, in its sole discretion, to make any changes to the BookNook Solution that it deems necessary or useful to: (i) maintain or enhance: (a) the quality or delivery of the BookNook Solution to its customers, (b) the competitive strength of or market for the BookNook Solution, or (c) the BookNook Solution's cost efficiency or performance; (ii) to comply with applicable laws, rules and regulations; or (iii) to comply with BookNook's contractual obligations to its suppliers.



BookNook Tutoring Services Agreement

- 2.6 Open Source Components. The BookNook Solution includes Open Source Components and any use of the Open Source Components by Customer shall be governed by and subject to the terms and conditions governing such Open Source Components.
- 2.7 Responsibility for Authorized Users. Authorized Users who register for an account in connection with their use of the BookNook Solution must provide accurate and complete registration information. Customer is solely responsible for all actions taken by Authorized Users, the security of Authorized Users' passwords and any use of Authorized Users' account. If Customer becomes aware of any unauthorized use of an Authorized User's password or account, Customer agrees to notify BookNook immediately.
- 2.8 Professional Services. In connection with providing the BookNook Solution to Customer, BookNook and Customer may agree in an Order Form upon training, consulting or other professional services (collectively, the "Professional Services") to be performed by BookNook. Customer agrees to provide BookNook with any required Customer Materials needed for BookNook to perform the Professional Services, and hereby grants BookNook a royalty-free, non-exclusive, worldwide license to use such Customer Materials for the sole purpose of enabling BookNook to perform the Professional Services. Except with respect to the Customer Materials, BookNook retains all right, title and interest in and to (i) anything it uses or develops in connection with performing Professional Services for Customer, including, among other things, software, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how; and (ii) anything it delivers to Customer during the course of performing Professional Services.

3. Fees and Payment Terms.

- 3.1 Fees and Invoicing. As consideration for BookNook providing Customer with the BookNook Solution and the services set forth herein or in an Order Form, Customer will pay BookNook the fees set forth in each Order Form (collectively, the "Fees"). Unless otherwise agreed upon on in an Order Form, Customer will be invoiced for all Set-up Fees upfront at the start of an Order Form Term that shall include payment for: the Software, Clever integration, and Program Launch. In addition to the upfront Set-up Fees, the Tutoring Cost, meaning payment for the scheduled tutoring sessions, will be invoiced to the Customer on a ratable monthly basis in arrears as described per "Item" in the Order Form.
- 3.2 Customer will: (i) pay all upfront invoices for the Set-up Fees as required 30 days prior to the commencement of Services; (i) pay all Tutoring Cost invoices within 30 days after the date of the applicable invoice; and (ii) make all payments hereunder in US dollars.
- 3.3 Taxes. As between Customer and BookNook, Customer accepts sole responsibility for the payment of any taxes, charges or assessments imposed on Customer, the BookNook Solution, or the fees to be paid to BookNook by any foreign or domestic



BookNook Tutoring Services Agreement

national, state, or local government bodies, or subdivisions thereof, and any penalties or interest (other than income taxes imposed on BookNook's revenue).

3.4 No Deductions or Setoffs. All amounts payable to BookNook under this Agreement shall be paid by Customer to BookNook in full without any setoff, deduction, or withholding for any reason. All Fees paid hereunder are non-refundable except as expressly provided for herein.

4. Term and Termination.

4.1 Term. This Agreement begins on the Effective Date and continues in full force and effect until the date that is twelve (12) months from the date on which there are no longer any outstanding Order Forms, unless terminated earlier pursuant to this Agreement (the "Term"). The term for the provision of the BookNook Solution (the "Order Form Term") will be as set forth in each applicable Order Form, but if no such Order Form Term is specified in the applicable Order Form, the term of such Order Form shall be twelve (12) months from the effective date of such Order Form.

4.2 Termination for Cause. Either party may terminate this Agreement or any Order Form with immediate effect, in whole or in part, by giving the other party prior written notice, if the other party: (i) commits a material breach of any of its obligations under this Agreement or an Order Form (as applicable), which breach is not cured within 30 days following receipt of written notice, or the parties agree (acting reasonably) cannot be cured within 30 days; (ii) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (iii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency laws; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. In addition, BookNook may terminate or suspend this Agreement (in whole or in part (i.e., as to any specific Order Form)) immediately upon written notice to Customer if (a) Customer breaches Section 2.4 or otherwise violates BookNook's Intellectual Property Rights or (b) Customer fails to pay any portion of the Fees when due.

4.3 Termination for Convenience. Parties shall be entitled to terminate this Agreement without cause by giving the other party a written notice of sixty (60) days. All payments that are required shall be paid out in accordance with the payment provisions contained in this Agreement.

4.4 Effect of Termination; Survival. When this Agreement or any Order Form terminates or expires: (i) Customer will no longer have the right to use the BookNook Solution referenced in each terminated or expired Order Form; and (ii) all Fees specified in any Order Form(s) that have not yet been paid by Customer as of the date of such termination or expiration will be immediately due and will be paid in accordance with Section 3. Sections 1, 3, 4.3, 5, 6, 8 and 9-11 (together with all other provisions hereof, including, without limitation, all Order Forms, exhibits and other attachments hereto,



BookNook Tutoring Services Agreement

that may be reasonably interpreted as surviving termination or expiration of this Agreement) will survive the termination or expiration of this Agreement.

5. Proprietary Material; Data.

5.1 BookNook. As between Customer and BookNook, BookNook owns and reserves all of its and its licensors' right, title and interest in and to: (i) the BookNook Solution; (ii) the Documentation; (iii) any and all enhancements, improvements, developments, derivative works or other modifications made to the foregoing; (iv) the Resultant Data (subject to Section 5.4); (v) BookNook's Confidential Information; and (vi) all Intellectual Property Rights in the foregoing (collectively, the "BookNook Intellectual Property"). Except as may expressly be set forth in this Agreement, no right, title, or interest to any of the BookNook Intellectual Property is transferred or licensed to Customer. All rights not expressly granted to Customer in this Agreement are reserved by BookNook and its licensors.

5.2 Customer. As between Customer and BookNook, Customer owns and reserves all of its and its licensors' right, title and interest to: (i) the Customer Materials; (ii) Customer's Confidential Information; and (iii) all Intellectual Property Rights in the foregoing (collectively, the "Customer Intellectual Property"). Subject to the terms of this Agreement, Customer grants to BookNook a limited, nonexclusive, worldwide, royalty-free, fully paid-up, sublicensable, transferable (in accordance with Section 11.5) license to use, store, adapt, modify, translate, publish, reproduce and distribute the Customer Materials during the Term as necessary for BookNook to provide the BookNook Solution, any Deliverables and related services to Customer under this Agreement and as otherwise necessary for BookNook to perform its obligations or exercise its rights under this Agreement. Except as may expressly be set forth in this Agreement, no right, title, or interest to any of the Customer Intellectual Property is transferred or licensed to BookNook.

5.3 Feedback. If Customer provides suggestions, feedback or other input to BookNook concerning the functionality and performance of the BookNook Solution, including identifying potential errors and improvements (collectively, "Feedback"), then Customer hereby grants BookNook and its affiliates a perpetual, irrevocable, worldwide, royalty-free, fully paid-up right and license to all Feedback and all Intellectual Property Rights therein (except patent rights and trademark and branding rights) to use, perform, display, reproduce, create derivative works, and otherwise exploit such Feedback for any purpose. The foregoing license shall be fully transferable and sublicensable.

5.4 Resultant Data. Notwithstanding anything to the contrary set forth herein, BookNook shall have the right to collect and analyze Resultant Data, and BookNook will be free (during and after the Term hereof) to (i) use such Resultant Data to improve and enhance the BookNook Solution and for other development, diagnostic and corrective purposes in connection with the BookNook Solution and other BookNook offerings; (ii) disclose such data solely in an aggregated and de-identified form in connection with its business (including for marketing purposes); and (iii) disclose such Resultant Data to Customer's funders and/or key stakeholders so long as such Resultant Data is de-identified so as not to identify any individual students.

6. Confidential Information.

6.1 Definition of Confidential Information and Obligations. Each party (the “Receiving Party”) acknowledges that by reason of its relationship to the other party (the “Disclosing Party”) under this Agreement, the Receiving Party will have access to certain information and materials, including the terms of this Agreement and each Order Form, concerning the Disclosing Party’s business, plans, technology, products and services that are confidential and of substantial value to the Disclosing Party, which value would be impaired if such information were disclosed to third parties (“Confidential Information”). The Receiving Party agrees that it shall not use in any way for its own account or the account of any third party, nor disclose to any third party, any such Confidential Information revealed to it by the Disclosing Party, except as expressly otherwise provided in this Agreement. The Receiving Party shall treat the Disclosing Party’s Confidential Information in confidence and protect it with the same degree of care as the Receiving Party uses to protect its own confidential or proprietary information, but with no less than reasonable care.

6.2 Exclusions. Confidential Information does not include any information that the Receiving Party can demonstrate by written records: (i) was rightfully known to the Receiving Party prior to its disclosure under this Agreement by the Disclosing Party; (ii) is independently developed by the Receiving Party without use of, or reference to, any Confidential Information of the Disclosing Party; (iii) is or becomes publicly known through no wrongful act of the Receiving Party; (iv) has been rightfully received from a third party whom the Receiving Party has reasonable grounds to believe is authorized to make such disclosure without restriction; (v) has been approved for public release by the Disclosing Party’s prior written authorization; or (vi) must be produced or disclosed pursuant to applicable law, regulation or court order, or upon request by an examiner, auditor or regulator provided that the Receiving Party provides prompt advance notice thereof to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure. In addition, either party may disclose the existence and terms of this Agreement (a) to its auditors, (b) to existing and potential investors who are performing due diligence in connection with a fundraising round, or (c) in connection with a potential acquisition of substantially the entire business, assets and/or equity of such party or a private or public offering of such party’s securities.

6.3 Return. Upon the earlier of the Disclosing Party’s request or the termination or expiration of this Agreement and/or Order Form(s), the Receiving Party shall, at the Disclosing Party’s option, promptly return to the Disclosing Party or destroy all Confidential Information including all copies thereof, in whatever medium in its possession or control; and in either event, will certify in writing to the Disclosing Party that such actions have all been completed. Notwithstanding the foregoing, the Receiving Party may retain (i) any Confidential Information required to be retained to comply with applicable laws or regulatory requirements; and (ii) any Confidential Information contained in computer files maintained pursuant to the Receiving Party’s customary archiving or back-up procedures; provided, however, that all such retained Confidential Information shall continue to remain subject to the provisions of this Section 6.

7. Privacy and Security.

All information collected by BookNook will be used, stored and processed in accordance with BookNook's privacy policy located at <https://www.booknooklearning.com/privacy/>. BookNook will maintain industry-standard administrative, technical, and physical safeguards to protect any information and data collected by BookNook from Customer. BookNook will, on an ongoing basis, ensure that its information security program and safeguards are designed, maintained, updated and adjusted, as necessary, to protect against reasonably foreseeable internal and external risks. Unless Customer receives prior express written authorization from BookNook, Customer may not process via the BookNook Solution, or submit to BookNook, any Customer Materials that include any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act of the United States of America; (ii) government issued identification numbers, including Social Security numbers, driver's license numbers and other state or national issued identification numbers; (iii) financial account information, including bank account numbers; (iv) payment card data, including credit card or debit card numbers; or (v) biometric information, such as fingerprints or voiceprints.

8. Representations and Warranties.

8.1 Mutual. Each party represents and warrants to the other that: (i) it has the right, power, and authority to enter into this Agreement and perform its obligations hereunder; (ii) it will, at all times, comply with all applicable laws, statutes, treaties and regulations to which it is subject; and (iii) it has all the necessary rights to grant the rights and licenses hereunder.

8.2 By BookNook. BookNook shall use reasonable efforts consistent with prevailing industry standards to maintain the BookNook Solution in a manner which minimizes errors and interruptions in the BookNook Solution and shall perform the Professional Services in a professional and workmanlike manner. The BookNook Solution may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by BookNook or by third-party providers, or because of other causes beyond BookNook's reasonable control, but BookNook shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, BookNook does not warrant that the BookNook Solution will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the BookNook Solution.

8.3 By Customer. Customer represents and warrants that: (i) has obtained all necessary consents, permissions and approvals of the parents and guardians of Authorizes Students required under all applicable laws for the Texting Campaign; (ii) it has obtained all necessary consents, permissions and approvals of such parents and guardians required under all applicable laws, Customer's privacy policy and other applicable Customer policies for the Customer to share such parents and guardians' phone numbers with BookNook; and (iii) Customer will promptly notify BookNook if a parent or guardian revokes any of the foregoing consents, permissions or approvals it has given to Customer or informs Customer that it does not want to receive any further texts.



BookNook Tutoring Services Agreement

8.4 Disclaimer of Warranties. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE BOOKNOOK SOLUTION, DELIVERABLES AND ANY RELATED SERVICES (INCLUDING ANY CLASSES) ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND, TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY LAW, BOOKNOOK EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. Limitation of Liability.

IN NO EVENT WILL BOOKNOOK OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (I) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (II) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (III) FOR ANY MATTER BEYOND BOOKNOOK’S REASONABLE CONTROL; (IV) FOR ANY LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE OR WEBSITES THAT ARE ACCESSED VIA, OR INTEGRATED WITH, THE BOOKNOOK SOLUTION; OR (IV) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO BOOKNOOK UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE FIRST CLAIM, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Indemnity.

10.1 BookNook Indemnification. BookNook shall indemnify, defend and hold harmless Customer and Customer’s officers, directors, employees, and agents (each, a “Customer Indemnitee”) from and against any and all Losses incurred by such Customer Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an “Action”) by a third party to the extent that such Losses arise from any: (i) allegation in such Action that Customer’s use of the BookNook Solution (excluding Customer Materials and Open Source Components) in compliance with this Agreement infringes a U.S. Intellectual Property Right; or (ii) gross negligence or willful misconduct by BookNook in connection with this Agreement. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: (a) access to or use of the BookNook Solution not in accordance with this Agreement; (b) modification of BookNook Solution other than by BookNook; (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of BookNook; (d) portion or component of the BookNook Solution made in whole or in part in accordance with Customer specifications; (e) any combination of the BookNook Solution with other products, processes or materials, unless the claim would have arisen irrespective of such combination; or (f) Customer’s failure to timely implement any modifications,



BookNook Tutoring Services Agreement

upgrades, replacements or enhancements made available to Customer by or on behalf of BookNook.

- 10.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless BookNook and each of its officers, directors, employees, and agents (each, a “BookNook Indemnitee”) from and against any and all Losses incurred by such BookNook Indemnitee in connection with any Action by a third party to the extent that such Losses arise out of or relates to any: (i) Customer Materials, (ii) the Texting Campaign, (iii) any breach by Customer of Section 8.3, and (iv) gross negligence or willful misconduct by Customer or any Authorized User in connection with this Agreement.
- 10.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 10.1 or 10.2, as the case may be. The party seeking indemnification (the “Indemnitee”) shall cooperate with the other party (the “Indemnitor”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section 10.3 will not relieve the Indemnitor of its obligations under this Section 10.3 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.
- 10.4 Mitigation. If the BookNook Solution, or any component thereof, is, or in BookNook’s opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right then, BookNook may, at its option and expense: (i) obtain the right for Customer to continue to use the BookNook Solution materially as contemplated by this Agreement; (ii) modify or replace the BookNook Solution, in whole or in part, to seek to make the BookNook Solution (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute BookNook Solution, as applicable, under this Agreement; or (iii) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the BookNook Solution, and provide to Customer a prorated refund of any Fees pre-paid by Customer as of such termination for the post-termination period.
- 10.5 THIS SECTION 10 SETS FORTH CUSTOMER’S SOLE REMEDIES AND BOOKNOOK’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED ACTIONS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE BOOKNOOK SOLUTION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

11. Miscellaneous.

- 11.1 Governing Law, Jurisdiction. This Agreement and all rights and obligations of the parties will be exclusively governed by, and construed and interpreted in accordance



BookNook Tutoring Services Agreement

with the laws of the State of California (without regard to conflict of law principles). Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal or state courts sitting in Sacramento County, California, and any appellate court of such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under this Agreement or in any way relating to this Agreement. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

- 11.2 Entire Agreement. This Agreement, together with all Order Forms, which are incorporated into and made a part of this Agreement, contain the entire understanding of the parties relating its subject matter and supersedes any prior written or oral agreement or understandings between the parties with respect to its subject matter of this Agreement. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 11.3 Publicity. Provided that BookNook complies with Customer's brand guidelines as advised from time to time: (i) BookNook shall have the right to list Customer as a customer in written, oral and electronic materials which include the names of BookNook's customers; and (ii) provide Customer as a customer reference for BookNook. Except as expressly permitted in this Agreement, BookNook shall not use any trademark, service mark, trade name, or other name or logo of Customer in any advertising or publicity and shall not issue any public statement concerning this Agreement without the prior written consent of Customer.
- 11.4 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. To the extent any express or implied restrictions are not permitted by applicable laws, these express or implied restrictions shall remain in force and effect to the maximum extent permitted by such applicable laws. The parties will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms.
- 11.5 Assignment. Neither party is allowed to assign or transfer any of its rights or obligations in this Agreement, in whole or in part, by operation of law or otherwise, without the other party's prior written consent, and any attempt to do so without such consent will be null and void. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, upon written notice to the other party but without the requirement to obtain consent, in connection with a merger, acquisition, corporate reorganization, or sale of the party's equity or assets.
- 11.6 Force Majeure. Except with respect to obligations to make payments under this Agreement, neither party shall be deemed in default under this Agreement, nor shall



BookNook Tutoring Services Agreement

it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations under this Agreement due to causes beyond its reasonable control including, but not limited to: earthquake, flood, fire, storm or other natural disaster, act of God, labor controversy or threat thereof, civil disturbance or commotion, disruption of the public markets, war or armed conflict or any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree.

- 11.7 Relationship of the Parties. BookNook is an independent contractor of Customer. This Agreement shall not be construed to and does not create a relationship of agency, partnership, employment or joint venture. Neither party has the authority to bind the other or create any legal obligation or responsibility for the other without the other party's prior written consent. The inclusion of portions of this Agreement in BookNook's arrangements with its consultants or subcontractors shall not create a contractual relationship between a consultant or subcontractor of BookNook and Customer.
- 11.8 Notice. Any legal notice, request, demand or other communication required or permitted under this Agreement should be in writing, should reference this Agreement, and will be deemed to be properly given: (i) upon receipt, if delivered personally; (ii) upon confirmation of receipt by the intended recipient, if by e-mail; (iii) five (5) business days after it is sent by registered or certified mail, with written confirmation of receipt; or (iv) three (3) business days after deposit with an internationally recognized express courier, with written confirmation of receipt. Notices should be sent to the address(es) set forth in the opening paragraph of this Agreement, unless we notify each other that those addresses have changed.
- 11.9 Amendments. Alterations or modifications of this Agreement will be valid only if made in writing signed by both parties.
- 11.10 Waivers. A party's obligations under this Agreement can only be waived in writing signed by an authorized representative of the other party, which waiver will be effective only with respect to the specific obligation described. The failure of a party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless in writing.

IN WITNESS WHEREOF, authorized representatives of each of the parties have executed this Agreement as of the Effective Date.

BookNook, Inc.

Sacramento City Unified School District

Signature: _____

Signature: _____

Name: Ryan Dupuis

Name: Rose Ramos

Title: Head of Partnerships

Title: Chief Business Officer

Date: _____

Date: _____

June 3, 2022

Sacramento City Unified School District
5735 47th Ave.
Sacramento, CA 95824

To Whom It May Concern:

BookNook is the nation's largest provider of school-based, technology-enabled, high-dosage tutoring for K-5 English Language Arts. We are the only vendor capable of providing the following services to Sacramento City Unified School District:

- We provide a unique and proprietary cloud-based synchronous instructional platform that includes an interactive standards-aligned curriculum. Our platform adapts to students' needs based on data gathered during tutoring sessions, a functionality that we have patented (US9520070B2) and which therefore cannot legally be provided by another vendor in the United States.
- Our instructional platform is integrated with logistics software that provides for the grouping of students for tutoring, matching students to tutors, setting a weekly schedule for tutoring, populating an online appointments calendar for tutors, providing substitute tutors, and collecting timekeeping and attendance data. This functionality is covered by a pending patent (Provisional #63/235,526) under review.
- We provide access to the nation's largest pool of vetted and trained online tutors, making us capable of providing the level of scale that a district the size of Sacramento City Unified School District may need. We are the only vendor in the United States that has a track record of successfully providing live tutoring for 5,000 or more students in a single district. We are currently under contract to provide tutoring to a total of over 80,000 students nationwide.
- Because of these unique capabilities, several other large urban school districts have been able to adopt BookNook via Sole Source Procurement, including the Los Angeles Unified School District and the San Francisco Unified School District.

This letter serves as certification by BookNook, Inc. that we are the sole provider of the products and services referenced above and sold under the BookNook mark.

Should you have additional questions, please feel free to contact us.

Sincerely,



Michael Lombardo
Founder & CEO



Quote Information

Company Address 548 Market St, PMB 98100
San Francisco, CA 94104
US

Created Date 5/23/2022
Expiration Date 6/30/2022
Quote Number 00002071

Prepared By Zac Stein
Email zac@booknooklearning.com

Contact Name Geo Linares
Phone (916) 6439163
Email geovanni-linares@scusd.edu

Bill To Name Sacramento City Unified School District
Bill To PO Box 246870
Sacramento, CA 95824
US

Contract Dates

Start Date 6/13/2022 End Date 9/30/2022

Line Items

Product	List Price	Quantity	Subtotal	Total Price
High Dosage Tutoring Package (20, 1:4)	\$230.00	3,000.00	\$690,000.00	\$690,000.00
BookNook Summer License	\$20.00	3,000.00	\$60,000.00	\$60,000.00
Tutoring Program Launch Fee (medium)	\$25,000.00	1.00	\$25,000.00	\$25,000.00
SSO Integration	\$0.50	3,000.00	\$1,500.00	\$1,500.00

Total Price \$776,500.00

Acceptance of Quote/Agreement to Payment

This quote is governed by the terms and conditions of the BookNook Services Agreement found at <https://www.booknooklearning.com/online-agreement> (the "Online Agreement"), and by signing this quote, Customer agrees to the terms and conditions set forth in the Online Agreement and such terms are deemed to be incorporated by reference herein. Notwithstanding the foregoing, if Customer has executed a written contract with BookNook with respect to the BookNook Solution and related services (if any), that written contract, and not the Online Agreement, will govern. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Online Agreement or Written Contract, as applicable.

The Fees set forth above will be invoiced promptly following execution of this quote and are payable in accordance with the Written Contract or Section 3 of the Online Agreement, as applicable.

By signing below, the signer represents and warrants that he/she has the authority to bind his/her respective company on whose behalf this quote is being signed, effective as of the date set forth below.

Name (Printed)

Signature

Organization

Date

SAN JOAQUIN COUNTY OFFICE OF EDUCATION
SPECIAL EDUCATION INFORMATION SYSTEM
LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into this day, July 1, 2022, by and between the San Joaquin County Office of Education, a county office of education of the State of California, (hereinafter “Provider”) and
(hereinafter “Customer”), a special education local plan area of the State of California (collectively hereinafter “Parties”).

INTRODUCTION

WHEREAS, Provider is the creator and owner of a web-based suite of tools, known as the Special Education Information System (hereinafter “SEIS”), for use by special education programs in formulating, updating, tracking, storing and reporting on Pupil Records, including Individualized Education Plans (“IEPs”).

WHEREAS, Customer is interested in contracting with Provider in order to use SEIS in Customer’s region.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

- 1.1. “Administrative Contact” means the individual authorized by Customer to receive and provide information required to administer this Agreement.
- 1.2. “Adult Pupil” means a Pupil who has reached 18 years of age.
- 1.3. “Agreement” means this License Agreement.
- 1.4. “Authorized User” means the individual(s) or entity(ies) authorized by Customer to access SEIS on behalf of the Customer according to the terms of this Agreement. Authorized Users are limited to Customer’s designated employees and Third Party Service Providers who are contractors, agents, or volunteers of Customer.
- 1.5. “Customer Data” means documents, information and data, including Pupil Records, submitted to Provider by Customer’s Authorized Users for processing through SEIS and/or documents, information and data input or maintained in SEIS by Customer.
- 1.6. “Deidentified Information” means information that cannot be used to identify an individual pupil.

1.7. “Effective Date” means the date set forth above, provided that this Agreement is fully executed by both Provider and Customer.

1.8. “IEP” means a special education Pupil’s Individualized Education Plan, Individual Service Plan, or Individual Infant Service Plan.

1.9. “Parent” means a natural parent, an adopted parent or legal guardian of a Pupil.

1.10. “Pupil” or “Pupils” means a student or students of Customer.

1.11. “Password” means the License code provided to Customer’s Authorized Users to enable access to SEIS.

1.12. “Personal User Identification” means the identification code given to Customer’s Authorized Users.

1.13. “Personally Identifiable Information” includes: 1) the Pupil’s name, 2) the name of the Pupil’s parent or other family members, 3) the address of the Pupil or Pupil’s family, 4) a personal identifier, such as a Pupil’s social security number, Pupil’s number, or biometric record, 5) other indirect identifiers, such as the Pupil’s date of birth, place of birth, and mother’s maiden name, 6) other information that, alone or in combination, is linked or linkable to a specific Pupil that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the Pupil with reasonable certainty, or 7) information requested by a person who the educational agency or institution reasonably believes knows the identity of the Pupil to whom the Pupil Record relates.

1.14. “Pupil Records” means both of the following: 1) any information directly related to a Pupil that is maintained by Provider, including Personally Identifiable Information, and 2) any information acquired directly from the Pupil through the use of instructional software or applications assigned to the Pupil by a teacher or other Customer employee. “Pupil Records” does not mean aggregated Deidentified Information used by Provider for the following purposes: to improve educational products for adaptive learning purposes and for customizing Pupil learning; to demonstrate the effectiveness of Provider’s products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

1.15. “SEIS” means the Special Education Information System as more fully described in Appendix “A” which is hereby incorporated by reference as if fully set out herein.

1.16. “SEIS Component” means a component part of SEIS designed to perform a particular function as more fully described in Appendix “A.”

1.17. “SELPA” means Customer’s Special Education Local Plan Area.

1.18. “Third Party Service Providers” means persons or entities which provide services to Customer in connection with this Agreement and who are contractors, agents, or volunteers of Provider, but who are not employees of Customer.

ARTICLE II

SEIS SERVICES

2.1. Commencing on the Effective Date, Customer shall have the nonexclusive right, subject to the terms and conditions stated in this Agreement, to allow Customer's Authorized Users to obtain access to and use SEIS at www.seis.org for the limited purposes of selection forms, inputting data, and training. Customer shall have access to SEIS for all other purposes as allowed by this Agreement on the System Launch Date.

2.2. SEIS is a full-featured, multi-leveled system for managing IEPs consisting of the following SEIS Components as more fully described in Appendix "A" which is attached hereto and incorporated herein by reference:

- (a) IEP Creation/Update Component
- (b) Goals/Objectives Library Component
- (c) IEP Team/Pupil Assignment Component
- (d) CALPADS and Custom Reports Component
- (e) Records Retention and Archiving Component
- (f) E-Signature Component

2.3. Hosting, Enhancement, and Maintenance.

(a) Hosting. SEIS will be hosted for Customer for a period of thirty-one (31) months commencing with the Effective Date.

(b) Help Desk Services. Both telephone and online Help Desk service will be provided for the duration of this Agreement. Help Desk hours are Monday through Friday 8:00 a.m. through 5:00 p.m., excluding Provider's holidays. During these hours, Provider shall endeavor to respond to Help Desk inquiries within twenty-four (24) hours of receipt (weekends and holidays excluded).

(c) Ongoing Enhancements. It is anticipated that enhancements to SEIS will be ongoing.

(d) Maintenance. It is understood and agreed that maintenance may be required from time to time and Provider will endeavor to provide Customer with reasonable prior notice of such maintenance by posting such notice on the home page of SEIS. It is also understood that emergency maintenance may be required and, in such case, prior notice of such maintenance will not be provided to Customer.

ARTICLE III

LICENSE FEE AND PAYMENT TERMS

3.1. License Fee. In consideration for the License of SEIS as provided herein, Customer agrees to pay Provider license fees (“License Fees”) based on the February 3rd, 2022 Student Count as reported to the State of California and specified below. In the event the Customer’s most recent Student Count is 10% greater or less than _____, the following License Fees shall be revised proportionately according to the Provider’s then current Fee Schedule:

1.1 **2022/2023 Fiscal Year:**

- (a) SEIS License Fee: \$
- (b) SEIS Integration Fee: \$

1.2 **2023/2024 Fiscal Year:**

- (b) SEIS License Fee: \$
- (b) SEIS Integration Fee: \$

1.3 **2024/2025 Fiscal Year:**

- (c) SEIS License Fee: \$
- (b) SEIS Integration Fee: \$

3.2. Payment Terms.

- (a) Year One License Fee. Customer shall be invoiced after July 1, 2022.
- (b) Year Two License Fee. Customer shall be invoiced after July 1, 2023.
- (c) Year Three License Fee. Customer shall be invoiced after July 1, 2024.
- (d) Customer shall remit payment to Provider within thirty (30) calendar days of Customer’s receipt of invoices.

3.3. Cost Recovery.

(a) Provider, as a county office of education, is a public entity and bills Customer on a cost recovery basis. In order to ensure that Customer charges keep pace with Provider’s actual costs, fees are reviewed and re-negotiated on a three-year cycle.

(b) The current SEIS Fee Schedule for 2022-23 is attached hereto as Appendix “B” and incorporated herein by reference.

ARTICLE IV

TERM AND TERMINATION

4.1. This Agreement shall be in effect between Provider and Customer beginning with the Effective Date and terminating thirty-one (31) months from the Effective Date. No later than March 1, 2023 the Parties shall determine whether the current Agreement shall be extended for an additional three (3) year term.

4.2. Either Provider or Customer may terminate this Agreement upon at least ninety (90) days prior written notice to the other Party, with such termination to be effective at the end of the current period for which Customer has paid License Fees when the notice of termination is provided.

4.3. The provisions under which this Agreement may be terminated shall be in addition to any and all other legal remedies which either Party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such Party may have.

ARTICLE V

CONTENT AND USE OF SEIS

5.1. Customer shall have the right to provide Customer Data to Provider for inclusion in SEIS as follows:

(a) Customer is authorized to submit Customer Data to SEIS. By submission of Customer Data to Provider, Customer grants Provider a nonexclusive, royalty-free license to include the Customer Data in Provider's SEIS for use by Customer's Authorized Users of SEIS, with such use to include, but not be limited to copying, displaying, modifying, and preparing reports under the terms and conditions of this Agreement.

(b) Customer hereby warrants and represents that such Customer Data does not violate any intellectual property rights or privacy rights of third parties. Customer hereby agrees to indemnify, defend and hold harmless Provider from any and all liability associated with Provider's inclusion of Customer Data in SEIS. Customer further assumes sole responsibility for compliance with all intellectual property and privacy laws by any Authorized Users of the Customer.

5.2. Ownership and Control of Customer Data, Including Pupil Records. At all times during the term of this Agreement and after termination of this Agreement, all Pupil Records remain the exclusive property of Customer and Customer retains exclusive rights, ownership and control thereto.

5.3. Use of Pupil Records. Provider shall not use any Pupil Records to which it has access by way of this Agreement for any purpose other than those required or specifically permitted by this Agreement.

5.4. Review and Correction of Pupil Records. A Parent or Adult Pupil may review his/her Pupil Records that are retained, stored, hosted, accessed or used by Provider by making a request in writing to Customer for access to the subject Pupil Records. Subject to Customer verification of identity, approval of disclosure and redaction of any Personally Identifiable Information of a Pupil other than the Pupil of the Parent or Adult Pupil, who is making the request, Customer will direct Provider to provide access to any/all requested Pupil Records within five (5) business days or as otherwise required by law, by issuing the Parent or Adult Pupil a temporary user name and

password to log on to the Provider's software/information system to review the requested Pupil Records. This time frame may be extended by written consent of the Parent or Adult Pupil. A Parent or Adult Pupil may submit written corrections to Pupil Records retained, stored, hosted, accessed or used by Provider to Customer. Customer shall have exclusive authority over Provider with respect to authorizing disclosure of Pupil Records pursuant to this Agreement.

A Parent or Adult Pupil may correct erroneous information identified upon review of Pupil Records by making a written request to Customer. Subject to Customer's verification of identity and approval of such a request to correct the erroneous information, Customer shall notify Provider of the approved request and direct Provider to correct the erroneous information, if the erroneous information cannot be corrected by the Parent or Adult Pupil, or Customer due to system accessibility constraints. Provider will not make any modification to Pupil Records unless specifically directed to do so by Customer. Provider shall direct all requests to review and/or correct erroneous information to Customer through the following contact information:

District Name:
Contact Name:
Email Address:
Address/City/State/Zip:

5.5. Targeted Advertising Prohibited. Provider shall not use any Customer Data, including Pupil Records, to engage in targeted advertising during the term of this Agreement, and this provision survives the termination of this Agreement.

ARTICLE VI

PROVIDER'S PROPRIETARY RIGHTS IN SEIS/NONDISCLOSURE

6.1. Customer acknowledges that SEIS is the property of Provider and that the value of SEIS is in part determined by Provider's ability to limit access to and use of SEIS.

6.2. Except as specifically allowed in this Section 6.2, Customer agrees not to disclose or make available to any third party any of Provider's proprietary property to which Customer is granted access pursuant to this Agreement, including, without limitation, manuals and instructions for operation of SEIS, knowledge of operating methods, Passwords, Personal User Identification, and the names and designations of any equipment comprising the system. Customer may grant, to a Third Party Service Provider, access to Provider's proprietary property described in this Section 6.2 on the condition that the Third Party Service Provider agrees to comply with Customer's obligations under this Agreement.

6.3. To further protect Provider's proprietary rights in SEIS, Customer agrees to restrict access to SEIS to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to SEIS, of the obligations of Customer under this Agreement and require each Authorized User to maintain those obligations. Each Authorized User shall agree to the Terms of Use required of all users of the website before accessing the SEIS website.

6.4. Customer's Authorized Users are prohibited from accessing or using SEIS for any purpose other than to serve the SELPA in connection with this Agreement. If an AuthorizedUser uses SEIS for any unauthorized purpose, the use shall be deemed a breach of this Agreement.

6.5. SEIS and all supporting documentation shall remain the property of the Provider, excluding Customer Data, which includes Pupil Records, provided by Customer.

ARTICLE VII

PROTECTION OF PRIVATE CUSTOMER DATA

7.1. Customer and Provider recognize that some Customer Data in the SELPA and are confidential pursuant to relevant federal and state law, including but not limited to 20 USC section 1232(g) and Education Code sections 49060, et seq. Both Customer and Provider certify they will each abide by all applicable state and federal laws concerning Pupil Records.

7.2. Customer shall inform each Authorized User of the need to protect Customer Data containing Pupil Records. Customer agrees not to disclose or make available to any unauthorized third party any Pupil Records to which Customer's Authorized Users are granted access pursuant to this Agreement.

7.3. To further protect Customer Data, Customer agrees to restrict access to SEIS to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to SEIS, of the obligations of Customer under this Agreement, and will require each Authorized User to maintain those obligations as set forth in Sections 6.3 and 6.4.

7.4. Any failure by an Authorized User to protect Pupil Records shall be deemed a breach of this Agreement.

7.5. All Customer Data, including Pupil Records, shall remain the property of Customer.

7.6. Security and Confidentiality of Pupil Records. Provider will do the following to ensure the security and confidentiality of Pupil Records:

(a) Designate an employee responsible for the training and compliance of all Provider employees, agents, and assigns on compliance with security and confidentiality provisions detailed in this Agreement.

(b) Provider will protect the confidentiality of Pupil Records and take all reasonably necessary measures consistent with industry standards to protect Customer Data from any and all unauthorized access and disclosures.

(c) Provider has designated an individual responsible for training Provider employees, agents and assigns on reasonable protection measures and the confidentiality of Pupil Records consistent with state and federal law.

(d) Provider shall not disclose Pupil Records, except as specified under the terms of this Agreement or as required by law.

(e) Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used Pupil Records received from or on behalf of Customer and/or Pupils.

(f) Provider warrants that all confidentiality and security measures identified in this Agreement will be extended by contract to any and all subcontractors used by Provider, if any, to execute the terms of this Agreement.

(g) Provider warrants that all Pupil Records will be encrypted in transmission and storage.

(h) Provider will use appropriate and reliable storage media, which shall include weekly backup of all input provided by Customer and offsite storage of backup material for a 30-day period.

7.7. Unauthorized Disclosure Notifications. In the event of an unauthorized disclosure of Pupil Records, the following process will be followed:

(a) Immediately upon becoming aware of a compromise of Pupil Records, or of circumstances that could have resulted in an unauthorized access to or disclosure of Pupil Records, Customer and Provider agree to notify the other Party, fully investigate the incident and fully cooperate with the other Party's investigation of the incident, implement remedial measures and respond in a timely manner.

(1) Parent or Adult Pupil will be immediately notified of:

- (i) The nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.);
- (ii) The specific Pupil Records that were used or disclosed without authorization;
- (iii) What Provider and Customer have done or will do to mitigate any effects of the unauthorized use or disclosure; and
- (iv) What corrective action Provider and Customer have taken or will take to prevent future occurrences.

(b) Except as otherwise required by law, Provider will not provide notice of the incident directly to the Parent or Adult Pupil whose Pupil Records were involved, regulatory agencies, or other entities, without prior written permission from Customer.

7.8. Compliance with Applicable Laws. Customer Data, includes Pupil Records subject to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g). Provider recognizes that as a county office of education and public entity, Provider is considered a "School Official" (as the term is used in FERPA and its implementing regulations) for any and all software, hosting and services provided to Customer through this Agreement. The Parties agree that the services

provided to Customer through this Agreement serve a “legitimate educational interest,” as defined and used in FERPA and its implementing regulations. The Parties agree to jointly ensure compliance with FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to Education Code section 49060 et. seq. The Parties shall comply with the following process for compliance with FERPA and California law:

(a) Provider and Customer warrant that they are familiar with the confidentiality, security and disclosure requirements of FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to Education Code section 49060 et. seq. and have designated an individual responsible for ensuring compliance therewith.

(b) Provider and Customer shall abide by the disclosure, security, breach notification, retention/destruction and use provisions contained in this Agreement and as required by law.

(c) By the signature of its authorized representative or agent below, Provider hereby acknowledges that Customer has provided notice under Education Code section 49075(a) and 34 C.F.R. section 99.33(d) that Provider is strictly prohibited from disclosing Pupil Records from Customer to any third party without the prior written consent and direction to authorize -disclosure by Customer.

7.9. Within thirty (30) days of the Effective Date of termination of this Agreement, or within thirty (30) days from completion of this Agreement, Provider warrants that it will securely transmit all Customer Data, including Pupil Records, to Customer in ASCII delimited file format or other mutually agreed format, without retaining any copies of Customer Data. In the alternative, and subject to a written request from Customer, Provider will securely destroy all Customer Data, including Pupil Records, upon termination of this Agreement. Provider will then provide verification to Customer that the Customer Data not otherwise returned to Customer was destroyed subject to Customer’s written request, the date of destruction and the method of destruction.

ARTICLE VIII

PERSONAL USER IDENTIFICATION AND PASSWORD PROVIDED

8.1. Customer’s Authorized Users shall gain access to SEIS via the Internet through the Authorized Users’ Personal User Identification and Password.

8.2. Immediately following the initial data loading of Authorized Users, Customer shall assume sole responsibility for the management of Personal User Identification and Passwords for all Customers’ Authorized Users. The Customer’s Administrative Contact, or designee, at either the SELPA or school district level, shall be responsible for ensuring that Personal User Identification and Passwords are provided only to Authorized Users and for managing, disabling or authorizing new Authorized Users Personal User Identification and Passwords.

ARTICLE IX

PASSWORD USE AND SECURITY

9.1. Customer agrees to assume sole responsibility for the security of the Passwords issued to Customer. Customer is solely responsible for disabling lost or stolen Passwords and Personal User Identification and for disabling user accounts that are no longer active.

ARTICLE X

LIABILITY FOR FAILURES OR DELAYS

10.1. Customer agrees that Provider shall not be liable for any delays or failures in performance or for any interruption of Provider's service and further agrees to indemnify and hold Provider harmless from any loss or claims arising out of the use of Provider's service or any materials provided under this Agreement.

ARTICLE XI

WARRANTY DISCLAIMER

11.1. PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO SERVICES OR DATA MADE AVAILABLE BY PROVIDER, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. PROVIDER ASSUMES NO RESPONSIBILITY IN CONNECTION WITH THE USE OF ANY OF THE SERVICES OR DATA MADE AVAILABLE BY PROVIDER. CUSTOMER AGREES THAT PROVIDER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE OR DATA ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF POTENTIAL LOSS OR DAMAGE.

ARTICLE XII

DEFAULT

12.1. Events Of Default. This Agreement may be terminated by the nondefaulting Party if any of the following events occur: (1) if a Party materially fails to perform or comply with this Agreement or any provision hereof; (2) if a Party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (3) if a petition under any foreign, state or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a Party; or (4) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days. However, before any such termination of this Agreement by the nondefaulting Party may occur, the defaulting Party shall have twenty (20) days from service of a notice of default to cure the default and should that Party cure said default within that time period no termination of this Agreement by the nondefaulting Party may occur. If the default is not cured within twenty (20) days, the nondefaulting Party may terminate this Agreement immediately.

12.2. Obligations On Termination By Default. Upon termination of this Agreement, Customer shall cease and desist from the use of SEIS. Provider reserves the right to disable any and all Passwords issued to Customer upon Customer's default herein.

ARTICLE XIII

NOTICES

13.1. All notices, authorizations, and requests in connection with this Agreement shall be deemed given in the following ways: (a) five (5) days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (b) one (1) day after being sent by overnight courier, charges prepaid, with confirming fax; and addressed as first set forth below or to such other address as the Party to receive the notice so designated by written notice to the other Party.

Provider

Name:

San Joaquin County Office of
Education

Attn:

John Arguelles, Division Director,
CodeStack

Address:

2901 Arch-Airport Road
P.O. Box 213030
Stockton, CA 95215

Phone: (209) 468-5924

Fax: (209) 468-9235

Email:

jarguelles@sjcoe.net

Customer

Name:

Attn:

Address:

Phone:

Fax:

Email:

ARTICLE XIV

INDEMNITY

14.1. In addition to the provisions stated above in Article V, X and XI, Customer agrees to defend, indemnify and hold harmless Provider and its Board of Education, Board members, directors, officers, employees and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and any other expenses arising out of or on account of any third party claim resulting or arising from Customer's breach of any terms of this Agreement either by intentional misconduct or negligence of Customer's directors, officers, employees or agents.

ARTICLE XV

GOVERNING LAW, JURISDICTION AND VENUE

15.1. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California.

15.2. The courts of the State of California, County of San Joaquin, shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Customer hereby consents to the jurisdiction of such courts.

ARTICLE XVI

SEVERABILITY

16.1. If any provisions of this Agreement shall be held to be invalid, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

ARTICLE XVII

NONASSIGNABILITY

17.1. This Agreement and the rights and benefits conferred upon Customer hereunder may not be assigned or otherwise transferred by Customer without prior written consent of the Provider.

ARTICLE XVIII

ENTIRE AGREEMENT

18.1. This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter herein.

ARTICLE XIX

MODIFICATIONS

19.1. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each Party's duly authorized representatives.

ARTICLE XX

NONWAIVER OF RIGHTS

20.1. Customer and Provider agree that no failure to exercise and no delay in exercising any right, power, or privilege on the part of either Party shall operate as a waiver of any right, power or privilege under this Agreement. Customer and Provider further agree that no single or partial exercise of any right, power, or privilege under this Agreement shall preclude further exercise thereof.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

Provider

Customer

San Joaquin County Office of Education

By:

By:

Name: Johnny Arguelles

Name:

Title: Division Director, CodeStack

Title:

Date:

Date:

APPENDIX "A"

SAN JOAQUIN COUNTY OFFICE OF EDUCATION SPECIAL EDUCATION INFORMATION SYSTEM DESCRIPTION

SEIS was initially created by the Provider and the San Joaquin SELPA, to make IEPs easier for teachers to complete and track using a web-based system. Gradually, additional functions were added, including an MIS (CALPADS) utility, the ACSA/CARS+ and SEACO standards-based goals banks, and report generator utilities. Since its launch in 2003, SEIS has proven to be an effective tool for both teachers and administrators in over ninety SELPAs around the state. Some key features in SEIS include:

Automation -- Information can be used in other formats such as IEP notifications, state-required reports, and customized report.

Simplicity -- IEPs are more easily revised, are clearer and easier to read, and well organized; redundant information can be entered only once, decreasing preparation time; pull/drop-down menus, radio buttons, and check boxes increase accuracy of coded items.

CALPADS Preparations -- Because CALPADS information is required on the IEP, the Provider automatically ties CALPADS code to the information inputted by the teachers and service provides. Furthermore, the Provider incorporates a CALPADS error checking component that validates the information before completing the IEP process. This process completely automates the preparation of CALPADS data, because the CALPADS error is caught at the point of initial input. Also, prior to reporting time, SEIS will flag all student records where CALPADS errors are identified and link directly to those errors to streamline the correction of errors.

Goal Banks -- There is an easily-accessible and IEP-linked library of standards-based essential goals and objectives (benchmarks). Through an agreement with ACSA/CARS+ and SEACO we are able to add the latest generation of their work to SEIS, which includes LSH and transition resources. Teachers have a choice of selecting standards-based goals and objectives from the ACSA/CARS+ library, the SEACO goal bank, the BASICS goal bank, or creating their own unique goals and objectives library or accessing goals and objectives created by other special education staff within the SELPA or across the state. The linked goal library allows Teacher to search any of the above listed goal banks select a goal and any number of objectives. With a single click, these goals and objectives will automatically copy onto the IEP and can be customized and saved into the Teacher's individual goal bank.

Data Centralization and Transferability -- Demographic and IEP information follows the student from teacher to teacher, site to site, district to district, and SELPA to SELPA within participating SELPAs; Student transfers are instant and IEP history can be viewed ensuring continuity of the educational plans for students. For example, when a new student enters into a SELPA the system requires the user to search the entire state-wide SEIS database before adding a new record. If the student appears in another SELPA, a link is available to request a transfer. The user can click the Request Transfer link and a notification will be sent to the student's current SELPA, informing them of the transfer request and they can process the transfer in minutes. Once the request is processed, the new SELPA has access to that student's entire IEP history, service, service provider history, eligibility status history, etc.

APPENDIX "B"

SAN JOAQUIN COUNTY OFFICE OF EDUCATION SPECIAL EDUCATION

FEE SCHEDULE (2022-2023 FY)

MAINTENANCE FEES

\$8.50 per February 3rd, 2022 Student Count; Minimum of \$8,000



SERVICES AGREEMENT

Date: June 9, 2022 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and City Year, Inc., a not for profit organized for educational and charitable purposes under the laws of the Commonwealth of Massachusetts with an address of 287 Columbus Avenue, Boston, Massachusetts 02116 (hereinafter referred to as "City Year" or "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Provide a scalable, centrally managed "Whole School Whole Child" model that delivers a holistic set of whole-school and focused supports to ensure students stay in school and on track to graduate, by deploying teams of AmeriCorps Members ("Members") to District schools as follows:

2022-2023: Up to 66 AmeriCorps members in District schools - Earl Warren Elementary; Father K.B. Kenny K-8; Fern Bacon Middle; Leataata Floyd Elementary; Oak Ridge Elementary; and Rosa Parks K-8.



2023-2024: Up to 68 AmeriCorps members in up to seven District Schools. Schools will be mutually agreed upon between Contractor and the District no later than July 15, 2023.

Provide such additional Services pursuant the terms and conditions set forth in the attached Appendix A: Scope of Services, Appendix B: AmeriCorps Prohibited Activities, Appendix C: Data Sharing, Appendix D: Whole School Whole Child Services, Appendix E: City Year and Leadership, Appendix F: AmeriCorps Member Training and On-Going Professional Development, Appendix G: Corporate Support for City Year, Appendix H: Extended Learning and After School Program Activities, Appendix I. Vote of the Sacramento City Unified School District, and Appendix J. Force Majeure, all of which are incorporated by this reference as if fully set forth herein.

ARTICLE 2. TERM.

This Agreement shall commence on July 1, 2022, and continue through June 30, 2024, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all Services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for Services satisfactorily rendered pursuant to this Agreement as follows:

Fee Rate: Total fee for the 2022-2023 school year shall not exceed Nine Hundred Seven Thousand Five Hundred Dollars (\$907,500). Total fee for the 2023-2024 school year shall not exceed Nine Hundred Fifty Three Thousand Seven Hundred Dollars (\$953,700).

For provisions of Services pursuant to this Agreement, Contractor shall provide documentation of \$100,000 in-kind match to the District.

Payment to Contractor shall be made within 30 days upon submission of periodic invoice(s) to the attention of Doug Huscher, Assistant Superintendent of Student Support Services, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used



without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Contractor agrees that any employee it assigns to provide services directly to, or have any contact with, pupil(s) of the District, shall be subject to the fingerprinting/background and TB requirements set forth in the California Education Code. Any employee that Contractor assigns to provide services directly to, or have any contact with, pupil(s) of the District shall have undergone the background check required in §45125(b)&(c), including response by DOJ, before any service or contact with pupil(s) of the District is allowed.

Pursuant to Education Code §45125.1, Contractor shall provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement (or MOU) and shall certify in writing to the District that Contractor has no information that any of its employees who are required to have their fingerprints submitted to the Department of Justice (DOJ), and



who may come in contact with pupils, have been convicted of a “violent or serious felony” as defined in §45122.1 or that they have been advised of any such arrest by the DOJ.

Contractor shall continuously monitor through DOJ, and obtain subsequent arrest notification from DOJ, regarding any individual whose fingerprints were submitted pursuant to §45125.1 and who is or will be providing service directly to, or has contact with, pupil(s) of the District. Upon receipt of a subsequent arrest notification from DOJ, Contractor shall, within 24 hours, notify the District of such arrest notification and prohibit the employee from having any further contact with any pupil(s) of the District until such time as the employee’s arrest has been determined to not involve a “violent or serious felony” as defined in §45122.1 or the notification has been withdrawn by DOJ. If an employee is disqualified from working for the District pursuant to the requirements of the California Education Code, even if only temporarily, Contractor agrees to provide a replacement employee within 15 days of receiving notification that the previous employee has been disqualified.

Contractor further agrees and certifies that any employee providing services directly to any pupil(s) of the District whether qualifying as a Mandated Reporter as defined by California Penal Code §11165.7(a), or not, shall be provided annual training on child abuse and mandated reporting of child abuse or neglect utilizing an evidence-based training method which includes training on how to recognize conduct of adults which may trigger reasonable suspicion of abuse of children, i.e., “red-flag” or “grooming” behaviors.

Failure to adhere to the terms of this provision is grounds for termination of the Agreement (or MOU).

ARTICLE 8: VACCINATION REQUIREMENTS

Per Sacramento City Unified School District Board of Education [Resolution No. 3233 requirements](#), Contractor agrees that any employee, agent, or subcontractor it assigns to provide services at District facilities will be fully vaccinated against COVID-19, unless they have filed a valid exemption with Contractor. Individuals with valid exemptions shall undergo regular, routine testing. Certification of compliance with the above requirements must be submitted using the following link prior to providing services at District facilities:

https://app.informedk12.com/link_campaigns/vaccination-certification-for-contracted-services?token=xpungUbbV5yLWwurunPm8CiQ.

Failure to adhere to the terms of this provision is grounds for termination of the agreement.

ARTICLE 9. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney’s fees, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of that Party or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed, and each Party shall bear the proportionate cost of any



damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 10. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a certificate of insurance reflecting its comprehensive general liability insurance coverage in a sum not less than \$2,000,000 per occurrence naming District as an additional insured. Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory. If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 11. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

Either party may terminate this Agreement for cause upon written notice to the non defaulting party of its intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the other party; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency; or (d) the Contractor notifies the District in writing that it has not received adequate funding commitment from AmeriCorps to support the level of service set forth in Article 1 of this Agreement .

Thirty (30) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District shall pay Contractor for Services performed before the notice is given and may secure the required services from another contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District.

ARTICLE 12. ASSIGNMENT.

Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 13. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or



certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
Attn: Contracts Office
5735 47th Ave
Sacramento CA 95824

Contractor:
City Year Sacramento
Attn: Macey Amissah McKinney
2331 Alhambra Blvd Ste 300
Sacramento, CA 95817
MMckinney@cityyear.org

With a copy to:
City Year, Inc.
Attn: Jessica Greenfield, Chief Financial and
Administrative Officer
287 Columbus Ave
Boston, MA 02116
jgreenfield@cityyear.org

ARTICLE 14. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 15. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 16. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital



status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District’s Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the parties pursuant to this Agreement Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted, a copy of which is attached in Appendix I: Vote of the Sacramento City Unified School District.

Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT**

CITY YEAR, INC.

By: _____
Rose Ramos
Chief Business Officer

By: _____
Jessica Greenfield
Executive Vice President & Chief Financial
and Administrative Officer

Date

Date

Appendix A: Scope of Services

City Year's vision is that, alongside our partners, we will advance educational equity and improve outcomes for students. It is our hope that this vision unites us through a shared purpose to work as one community with one goal of ensuring that all children are provided the environment, supports, and opportunities to succeed in school and in life. At City Year, educational equity means eliminating the predictability of student success or failure based on race, ethnicity, gender identity, sexual identity, socio-economic status, or any other identity marker, and ensuring that all children are provided a learning environment free of judgement, where individuals representing different identities are valued and welcomed.

City Year provides support to the students who need us the most – students who are disengaged, are struggling in school, and have fallen behind their peers socially or academically. To support these students, City Year provides a holistic support model that is able to be tailored to individual student need:

- **Academic Support & Intervention:** City Year advances educational equity by providing support and resources to the students and schools most in need. Students are on average three or more grade levels behind in content areas, and teachers cannot provide individual interventions to each student in their classroom. AmeriCorps members are trained in the same resources that teachers use to lead intervention groups with students.
- **Teacher Support and Satisfaction:** City Year supports teachers in their instructional practice, behavior management, and class culture and community building to help them differentiate their instruction and feel that they have the resources they need. This has resulted in a high level of teacher satisfaction with City Year as a resource to be able to best do their work, as reported on City Year's teacher surveys.
- **Social-Emotional Skill Development:** City Year's integrated approach is designed to consistently support students' social, emotional and academic development. City Year encourages students to learn and lead, and through these experiences, students gain a broader sense of self and acquire critical strengths, skills and learning mindsets and contribute to a positive school culture, climate and community. City Year's social-emotional skill development approach is aligned with the Collaborative for Academic, Social, and Emotional Learning's (CASEL's) competencies framework: self-awareness, self-management, social awareness, relationship skills and responsible decision-making.
- **Attendance Coaching & Improvement:** City Year AmeriCorps members provide attendance coaching to chronically absent students and those beginning to exhibit attendance challenges that allow them to set individual attendance goals and develop increased ownership of their attendance.
- **Family Engagement:** City Year engages with parents and families of students to connect them to the school community and ensure they have what they need to best support their children in the learning.
- **Enrichment Programming:** City Year AmeriCorps members run after-school and during school enrichment programming for students, which fills an existing resource gap

because many schools do not have the capacity to be able to provide these opportunities to students.

- **Ongoing Observation & Coaching:** Each City Year school partner has a dedicated City Year staff member who manages the AmeriCorps members, provides ongoing and regular observation and coaching to improve AmeriCorps member academic tutoring and social-emotional content delivery, leads regular data reviews to identify areas of achievement and improvement, and collaborates with the school principal, teachers, and other school staff to ensure a strong partnership.

City Year AmeriCorps members can provide a variety of supports both in-person and via the District’s virtual learning platform(s) to support schools, should the COVID-19 pandemic prompt another shift to virtual or hybrid learning.

Activity	Format	Description
Whole School Initiatives (Tier 1)	In-Person Virtual	ACMs can provide support to the entire school community by planning and leading attendance initiatives, school connection events, culture/climate building activities, and school or grade level town hall meetings.
Morning Greeting (Tier 1)	In-Person Virtual	ACMs can welcome students to school/learning each day through in-person morning greeting as students arrive at school and virtually through recorded morning messages shared via social media or school technology platforms.
Whole Classroom Support (Tier 1)	In-Person Virtual	ACMs can provide whole class support to students, leading warm-ups/do nows, and checking for student understanding during lessons, Virtually, ACMs can participate in synchronous and asynchronous learning in whole “class” spaces, where teachers are leading instruction and/or creating a class community space, supporting the delivery of content and the engagement of students in learning.
Google Classroom Community Building (Tier 1)	Virtual	Utilizing the Google Classroom Stream, ACMs can create a positive culture and an engaged learning community through ongoing questions, appreciations, age appropriate jokes, and individual students and whole classroom celebrations.
Facilitation Support (Tier 1)	Virtual	Many virtual platforms can make it difficult to both run a lesson/meeting and manage the technical spaces. ACMs can support lesson delivery by monitoring the chat, sharing resources, and communicating questions from the group.
Extra-Curricular Groups/Clubs, Enrichment Programming, and Extended Day Activities (Tier 1)	In-Person Virtual	ACMs can lead extended day and enrichment programming for students to keep them engaged and connected to their peers and school community.

Teacher/Staff Alignment & Support (Tier 1)	In-Person Virtual	ACMs can join staff meetings and school-level professional development opportunities to ensure alignment and coordination with faculty and staff and can support teachers' virtual office hours.
Student, Teacher, and School Staff Appreciations (Tier 1)	In-Person Virtual	ACMs can appreciate students, teachers, and school staff through in-person events and initiatives and virtually by sharing appreciation notes and videos via social media and school technology platforms for students, teachers, and school staff.
Attendance Coaching & Student Virtual Participation/Engagement (Tiers 1 & 2)	In-Person Virtual	ACMs can provide attendance coaching to students struggling with attendance, helping them set weekly attendance goals, reflect on their progress or challenges with attending school regularly, and take ownership over their attendance. Virtually, ACMs can support student participation in and engagement with technology platforms to ensure they are involved in the learning community
Family Engagement/Phone Calls Home (Tiers 1 & 2)	In-Person Virtual	ACMs can call parents and families to share updates on how their children are doing in school and to check-in on them during virtual learning to ensure they have the tools they need for learning at home.
Student Phone Check-ins (Tiers 1 & 2)	Virtual	ACMs can call students via their home phone number to ensure they understand, are engaged in and are participating in virtual learning efforts. To protect all parties, ACMs would never have 1:1, unsupervised conversations with minors.
Academic Interventions: ELA and/or Math (Tier 2)	In-Person Virtual	ACMs can lead small groups that support the teacher instruction and provide tutoring in math and ELA. These small groups can take place inside the school building or utilizing virtual platforms such Google Meets or Zoom breakout rooms.
Social-Emotional Skill Development (Tier 2)	In-Person Virtual	ACMs can create support positive, asset-based spaces for community building and connection and meet with small groups of students to identify social-emotional strengths and needs and develop new student skills.
Homework Help (Tier 2)	In-Person Virtual	ACMs can support students in completing their homework in-person and virtually through office hours and small group support within school technology platforms.

City Year's Evidence-based Model

City Year helps students and schools succeed by delivering holistic support to students, classrooms and the whole school, working to ensure that students in systemically under-resourced schools are prepared with the skills and mindsets to thrive and contribute to their communities. City Year's approach is based on research about how students learn and our strategies and activities to encourage learning are based on a Response to Intervention model, with a focus on Tier 1 and Tier 2. City Year utilizes evidence-based curriculum and Tiered Intervention models to ensure students are engaged in their learning and are academically progressing.

- ELA/ Literacy:
 - Reading A-Z: City Year Sacramento uses Reading A-Z for its extensive collection of leveled reading resources. With more than 2,000 books at 29 levels of reading

difficulty to choose from, we can match students with developmentally appropriate content, in order to, over time, get them to grade level proficiency. Reading A-Z includes thousands of corresponding resources to enhance instruction and strengthen students' reading skills, such as guided lesson plans, worksheets, assessments, and more.

- Math
 - Do the Math: City Year Sacramento uses Do the Math (DTM), an intensive, small- group, supplementary mathematics intervention programs designed to provide powerful, daily, small-group instruction to build numerical reasoning and restore confidence, and target foundational arithmetic skills to help students develop key Algebraic skills and participate in grade level content.
- Attendance
 - Check In, Check Out: AmeriCorps members utilize the research-based Check In, Check Out attendance coaching model. At the start of each week, AmeriCorps members “check in” with individual students to set weekly goals and plan for potential attendance challenges. At the end of the week, students “check out,” during which they discuss the progress made to achieve their weekly attendance goal and any challenges that should be reflected on over the weekend and included in their “check in” meeting the following week. By helping students internalize their attendance goals, this coaching leads to increased ownership of attendance and future success for students at-risk of chronic absenteeism.
- Social-Emotional Learning
 - Clover Model: One tool that City Year AmeriCorps members use to ensure an asset-based approach to working with students is the Clover model, which was developed by Dr. Gil Noam of the PEAR Institute: Partnerships in Education and Resilience (affiliated with McLean Hospital and Harvard Medical School). The Clover model highlights four essential elements, or “leaves” that people of all ages need to thrive, learn and grow: Active Engagement; Assertiveness; Belonging; and Reflection. This framework provides a common language and fosters an environment for both adults and students to talk about student development, strengths and needs. The model empowers adults to more successfully form positive relationships with students, implement a range of youth development practices throughout the school day, and foster students’ social-emotional development.
 - Holistic Student Assessment: City Year utilizes the Holistic Student Assessment (HSA), a self-report questionnaire that measures an individual student’s social, emotional, and developmental resiliencies; relationships with peers and adults; and learning and school engagement The HSA brings student voice into the identification of student strengths, challenges, and degree of school engagement with the goal of The HSA is better understanding the developmental needs and strengths of individual students to support intervention programming.*

- Devereux Student Strengths Assessment: City Year measures its social-emotional development work using the Devereux Student Strengths Assessment (DESSA), a standardized, strengths-based observational tool of social competencies defined by the Collaborative for Academic and Social Emotional Learning (CASEL): self-awareness, self-management, social awareness, relationship skills, and responsible decision-making. The DESSA not only indicates student growth, but also pinpoints skills, strengths and needs, and is used monthly by AmeriCorps members to monitor growth and progress in individual student social-emotional skill development. *

*(*Together, the DESSA and the HSA provide an instructional map for AmeriCorps members to use to target and customize interventions and successfully navigate students' social and emotional growth. See Appendix A for detail on how the HSA and DESSA competencies map to each other.)*

To comply with the terms of its grant with the Corporation for National and Community Service, City Year is required to retain a completed Statement of Partnership for each of its partner schools. City Year will coordinate with principals at each partner school to finalize and deliver a fully executed Statement of Partnership no later than September 30, 2020. A copy of the Statement of Partnership for each school will be available upon request.

Appendix B: AmeriCorps Prohibited Activities

Prohibited Activities (see 45 CFR § 2520.65):

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or AmeriCorps, staff and members may not engage in the following activities:

1. Attempting to influence legislation;
2. Organizing or engaging in protests, petitions, boycotts, or strikes;
3. Assisting, promoting, or deterring union organizing;
4. Impairing existing contracts for services or collective bargaining agreements;
5. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
7. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
8. Providing a direct benefit to—
 - a. A business organized for profit;
 - b. A labor union;
 - c. A partisan political organization;
 - d. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - e. An organization engaged in the religious activities described in paragraph C.7. above, unless AmeriCorps assistance is not used to support those religious activities;
9. Conducting a voter registration drive or using AmeriCorps funds to conduct a voter registration drive;
10. Providing abortion services or referrals for receipt of such services; and
11. Such other activities as AmeriCorps may prohibit.

In addition to the above activities, the below activities are additionally prohibited:

Census Activities. AmeriCorps members and volunteers associated with AmeriCorps grants may not engage in census activities during service hours. Being a census taker during service hours is categorically prohibited. Census-related activities (e.g., promotion of the Census, education about the importance of the Census) do not align with AmeriCorps State and National objectives. What members and volunteers do on their own time is up to them, consistent with program policies about outside employment and activities.

Election and Polling Activities. AmeriCorps member may not provide services for election or polling locations or in support of such activities.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non- AmeriCorps funds. Individuals should not wear the AmeriCorps logo while doing engaging in any of the above activities on their personal time.

All locations where members serve should post a list of the prohibited activities, when possible.

Additional AmeriCorps Restrictions (see 45 CFR § 2540.100):

Nonduplication. Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the Nondisplacement requirements are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

Nondisplacement.

1. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.
2. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.
3. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.
4. A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.
5. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that -
 - a. Will supplant the hiring of employed workers; or
 - b. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.
6. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any -
 - a. Presently employed worker;
 - b. Employee who recently resigned or was discharged;
 - c. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
 - d. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
 - e. Employee who is on strike or who is being locked out.

Appendix C: Data Sharing Agreement

In order for City Year to successfully implement the services described in the District Service Agreement between the parties [of even date herewith] and improve student performance, it is essential that City Year have access to the necessary data and support to properly monitor, adjust and measure the impact of the student supports provided.

ACCORDINGLY, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually agree as follows:

1. **Use of Data.** City Year uses student-level performance data in partnership with district and school personnel to:
 - determine the scope and types of whole-school, in-class, and targeted student services it will provide;
 - set goals with school administration, teachers, and students regarding school, classroom, and student outcomes;
 - monitor the progress and evaluate the efficacy of its suite of services, from individual students up to whole-school impacts;
 - identify students who are in need of intensive support, monitor their progress, plan and track their interventions throughout the year;
 - report on performance metrics to the school and the school district; and
 - inform and refine our WSWC model design and improve overall quality of service.

2. **Obligations of City Year.** To ensure appropriate whole school and targeted interventions are provided, City Year agrees to:
 - periodically review student progress in coordination with representatives from each school partner's student support team (or reasonable proxy) and make decisions regarding student participation in the partnership's targeted interventions;
 - complete periodic reports on behalf of the partnership to City Year's stakeholders, including the school district and AmeriCorps;
 - share evaluation reports from evaluations commissioned by City Year; and
 - track key output data related to City Year's core services.

3. **Obligations of the District.** To ensure appropriate whole school and targeted interventions are provided, the District agrees to:
 - provide a primary data collection liaison/data coordinator to ensure that the school and/or the school district provide all necessary student-level data in a timely basis, in accordance with district policies and procedures;
 - help facilitate the completion of surveys and report outcome data in a timely manner to help facilitate internal or external reporting on City Year's impact;
 - facilitate and/or support the collection of student-level data as outlined below; and
 - provide all end of year data for the school year(s) covered under this agreement to City Year no later than October of the following school year(s).

4. **Data Access, Acquisition, and Requirements.** From the District, City Year will receive the following identifiable, student-level information for all students in the schools it will serve as part of this Agreement:
- attendance data (e.g. daily absence or tardiness, number of absences/tardies over a specified time period, days attended and missed, average daily attendance);
 - behavior/discipline data (e.g. number of detentions, suspensions, office referrals);
 - climate & culture data (e.g. student, teacher, family, or other climate survey results);
 - ELA and math assessment data (e.g. teacher-produced, district interim and benchmark, district and state standardized tests);
 - ELA and math marking period grades and end-of-course grades;
 - ELA and math course assignments and grades (if available);
 - student identification and demographic data (e.g. name, district ID, date of birth, race/ethnicity, gender); and
 - class, class enrollment, teacher, and school identification data (e.g. name of ELA and math class and teacher, class rosters, school and class schedules).

This data will be provided for the current academic year on at least a weekly basis via a secure file transfer from the District to City Year. At the beginning of the academic year, the District will also provide to City Year prior year information for all students enrolled in the schools City Year serves for the data noted above. Schoolzilla by Renaissance will serve as City Year's data transfer partner.

Each school will complete surveys which will be used for reporting of City Year's impact. These include:

- periodic principal, school liaison, and teacher surveys;
- periodic student surveys; and
- any other pre-arranged survey efforts that will assist City Year to assess its performance.

The District will provide updated feeder pattern/student matriculation data, as needed – on an annual or biannual basis – to inform the strategic deployment of City Year AmeriCorps members to schools.

Additionally, to enable City Year's partnership with the District, as well as the ability for City Year to support the District's virtual learning efforts, if virtual learning takes place, the District agrees to:

1. Provide District email accounts to all City Year AmeriCorps members and relevant City Year staff; and
2. Provide access to any virtual learning applications and technology platforms to all AmeriCorps members and relevant City Year staff.

5. **Subcontractor Use of District Data.** To the extent necessary to perform its obligations specified in the Agreement, City Year may disclose District Data to subcontractors pursuant to a written agreement. Subcontractors will be bound by all data security, storage, and retention requirements under FERPA and other applicable federal, state, and local laws. For the limited purposes of the evaluation of City Year services and analyses of how to serve City Year's student populations most effectively, City Year may share student data



with agents, advisors, and third- party consultants and evaluators ("Representatives"). In these instances, the student data will be de-identified, and cases will be assigned unique External Evaluation ID numbers, assigned through an automated process. Files containing student data will only be shared via secure password protected networks and log-in information will only be shared with limited project personnel. City Year will inform any Representatives of the confidential nature of the data and direct them to treat the data confidentially and for the limited purpose of assisting City Year with its internal analyses and evaluation. In districts where Institutional Review Board (IRB) approval is required, it is the responsibility of the Representatives to secure approval.

6. **FERPA.** City Year uses data in partnership with the District in the legitimate educational interest of students, by reviewing student-level data to identify which students need supports and to modify those supports in response to data, aligning with the requirements listed in 34 C.F.R. §99.31 of the Family Educational Rights and Privacy Act (FERPA).

For purposes of this Agreement, City Year shall function as an agent of the District with regard to accessing pupil record information necessary for City Year’s performance. City Year agrees to the following conditions, as required by 20 U.S.C. §1232g and 34 C.F.R. §99.31(FERPA): City Year is under the direct control of the agency or institution with respect to the use and maintenance of education records; and City Year is subject to the requirements of 34 C.F.R. §99.33(a) governing the use and re-disclosure of personally identifiable information from education records.

For purposes of studying the program to improve instruction, City Year shall comply with all requirements of 34 C.F.R. §99.31(a)(6). City Year shall conduct its study in a manner that does not permit personal identification of parents and students by anyone other than representatives of City Year authorized by this Agreement with legitimate educational interests for purposes of this Agreement. For the purposes of auditing or evaluating City Year’s federally-supported program, City Year shall comply with 34 C.F.R. §§99.31(a) and 99.35.

7. **Ownership and Protection of Confidential Information.** Confidential Information means any and all information of either party disclosed or otherwise made available to or learned by the parties under this Agreement, which is designated as “confidential” or “proprietary” or which, under all of the circumstances, ought reasonably to be treated as confidential, and includes, but is not limited to, school data and all school student records and personnel records of both parties.

School Information means all information, in any form, furnished or made available directly or indirectly to City Year by the school partner or otherwise obtained by City Year from the school partner in connection with this Agreement, including all information of the school, District or any District affiliates to which City Year has had or will have access, whether in oral, written, graphic, or machine-readable form.

City Year, the District, and each school partner will maintain the confidentiality of any and all student data exchanged as part of this Agreement. Confidentiality requirements will



survive the termination or expiration of this agreement. To ensure the continued confidentiality and security of student data, City Year and school security plans will be followed.

Confidential Information of either party (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of that party or its licensors, as applicable. Neither party shall possess nor assert any lien or other right against or to Confidential Information of the other party. No Confidential Information of either party, or any part thereof (including, without limitation, any School Information), will be sold, assigned, leased, or otherwise disposed of to third parties by the other party or commercially exploited by or on behalf of City Year, its employees or agents.

During the course and scope of its services hereunder, City Year and/or its school partners will gain knowledge of or have access to, including electronic access to, Confidential Information of the other party, or otherwise have Confidential Information disclosed to it. The parties each understand that Confidential Information is made available to it only to the extent necessary to perform its duties within the course and scope of this Agreement, and the respective parties' and their respective personnel will use Confidential Information for no other purpose. Each party will disclose Confidential Information only to its personnel with a need to access such data as a necessary part of the performance of this Agreement.

City Year personnel may, by nature of the services, have access to systems and devices containing Confidential Information, but have no need to actually access such Confidential Information in order to perform Services. City Year therefore agrees to use reasonable efforts to avoid unnecessary exposure by City Year personnel to Confidential Information. City Year further agrees to comply, and agrees to require City Year personnel to comply, with all applicable laws relating to the access, use and disclosure of Confidential Information and any School Information embodied therein. The parties will each cooperate fully in resolving any actual or suspected acquisition or misuse of Confidential Information.

Notwithstanding the terms of this section, the parties may disclose Confidential Information if disclosure is required by law in response to a valid order of a court of competent jurisdiction or authorized government agency, provided that the disclosing party must provide the other party prompt notice of the order and at the other party's request and expense, reasonably cooperate with efforts to receive a protective order or otherwise limit disclosure.

At no cost to the party that owns the Confidential Information, the other party shall upon (a) request by the owner at any time, and (b) upon termination or expiration of this Agreement, securely eliminate or return promptly in the format and on the media in use as of the date of request, all or any requested portion of Confidential Information that may be in the other party's possession or control. Notwithstanding the foregoing and subject to any restrictions imposed by applicable law, the parties may each retain a copy of the other's Confidential Information (but excluding any student or employee data) solely for archival purposes and in connection with any dispute between the parties.



Appendix D: Whole School, Whole Child Services

Whole School, Whole Child Services

Research from Johns Hopkins University has shown that students who are most at risk of dropping out of school can be identified as early as the 6th grade through three “off-track” early warning indicators (EWIs) that predict success in school – poor attendance, unsatisfactory behavior, and course failure in math or English. Students in high poverty environments whose performance is off-track in even just one of these indicators between the 6th and 9th grade typically have less than a 25% chance of graduating from high school. It is for this reason that we work primarily with students in grades 3-9 and focus on prevention, growth, and recovery.

City Year supports the efforts of school districts to turn around their lowest achieving schools by providing whole-school and targeted supports to ensure students stay in school and on track to graduate. To address the needs of students in high poverty schools, City Year utilizes research-based programming, the centerpiece of which is a holistic school partnership model called Whole School, Whole Child (“WSWC”).

This model is designed to leverage City Year’s unique assets – its AmeriCorps members – who serve as “near peer” tutors, mentors, role models, and coaches to students. City Year AmeriCorps members bring many positive attributes to their schools, including:

- A critical mass of human capital to help address the social emotional and academic needs of students who need additional support in the grades we serve
- A full-time school presence (approximately 7:30 a.m. to 6 p.m.) of highly organized, supervised, and trained young adults, four days a week
- An idealistic culture and energy that creates a more engaging learning environment
- The ability to organize school-wide and community events that engage families in the life of the school
- Increased intervention capacity to provide responses to student needs

WSWC services are guided by a rigorous data collection and review process that is used in partnership with school staff to regularly monitor individual student performance and to tailor the types and intensity of supports needed –both academically and socio-emotionally. City Year reviews student-level data and works with school leadership to identify students who are off-track in one or more of the EWIs. This process of data-informed intervention, based on an early warning monitoring system, allows City Year to deliver the right support to the right students at the right time. These supports include:

- Attendance Monitoring and Incentive Programs: AmeriCorps members work closely with students to monitor and improve attendance through attendance initiatives, direct student coaching, and communication to parents and guardians.
- Behavioral Support: AmeriCorps members coach students in developing various lifelong social, emotional and leadership skills through instruction in social emotional learning, and near-peer coaching and goal setting.
- Course Performance in math and English: AmeriCorps members tutor students one-on-one and in small groups, implementing intervention strategies in foundational skills that supplement the schools' curricula in order to increase student academic performance. AmeriCorps members also support whole class instruction and lead out-of-class activities

that complement classroom learning and help put students on a path towards high school graduation.

Services

AmeriCorps members and school partners use EWI data to identify which students need what types of intervention and when. City Year staff collaborates with school staff to employ a Response to Intervention (RTI) approach, a research-based strategy that allows educators to identify and monitor students who are off-track or falling off-track and make real-time adjustments to interventions. The RTI framework is divided into tiers of direct student support, enabling City Year to tailor the type and intensity of its academic and social-emotional interventions based on student need. City Year provides both Tier 1 school-wide supports and Tier 2 targeted interventions for students in need of extra support, but who do not qualify for special education. The figure below provides an example of how City Year services can be tailored in a particular school to support the growth of all students, while targeting the individual needs of students who require additional academic or social emotional development (SED) support. In all cases, AmeriCorps members strive to forge positive relationships with all students.

	Attendance	SED/Behavior	Course Performance	Afterschool
All Students (Tier 1)	<ul style="list-style-type: none"> Morning greeting/before-school activities Attendance incentive and recognition programming Student and community engagement 	<ul style="list-style-type: none"> Classroom, hallway, and lunch behavior support 	<ul style="list-style-type: none"> Classroom instruction support (enabling differentiated instruction) Academic-focused community engagement (e.g. Family Reading Night) 	<p>Homework Assistance Provide homework assistance, which includes providing general academic support and coaching, for a consistent group of students after school.</p> <p>Enrichment Programming Develop engaging activities for students after school, including enrichment and service. This may include arts, STEM, music, or recreation.</p>
Targeted Students (Tier 2)	<ul style="list-style-type: none"> Attendance monitoring (phone calls home) Attendance coaching Ongoing assessment and monitoring 	<ul style="list-style-type: none"> Behavior coaching Leadership development activities Ongoing instruction, assessment, and monitoring 	<ul style="list-style-type: none"> One-on-one tutoring Small-group tutoring Homework support before school and during afterschool programming Ongoing assessment and monitoring 	<p>Social Justice and Service Projects: Lead City Year's extended learning/ after school program that explores the social factors that influence our community and challenges learners to lead meaningful service activities that benefit their school and broader community.</p>

AmeriCorps members deliver these integrated services throughout the day, from before the first bell to the end of the school day, and in many schools, through the conclusion of afterschool programming. This full-time service provides a continuous, supportive presence throughout the day and can help to build connections between students' classroom learning and their before- and afterschool experiences. City Year teams encourage students to attend morning or afterschool programs, and with the help of data, they can check to see that the students who are attending are



those who need additional support. In City Year sites that support afterschool programming, this aspect of the WSWC model:

- Increases the relevance of extended learning time to best meet the individual needs of students.
- Deliberately links in-school learning and afterschool engagement opportunities.
- Increases community service and character/leadership development opportunities that are linked to classroom learning.



Appendix E: City Year Staffing and Leadership

A robust, local City Year leadership team will oversee all aspects of service provided to your district. This team is organized to streamline City Year’s communications with district and school partners, and to manage daily service delivery and the timely fulfillment of the partnership’s performance targets at both the district and school level. Key City Year team members include:

<p>City Year Executive Director: Serves as the primary leader and strategist for the site. The Executive Director is responsible for the site’s delivery, and its performance and success in achieving its potential for impact, sustainability, and scale.</p> <p>Managing Director/Director of Impact: Manages and develops the overall service partnership and oversees City Year’s day-to-day program implementation, evaluation, and documentation of efforts. The Director of Impact also coordinates with City Year field staff and individual schools to ensure that school-level performance targets are being met.</p>	<p align="center"><i>Primary Liaisons to the School District</i></p>
<p>Impact Manager: Serves as primary liaisons with each school principal and oversee the daily execution of services at the school site. The Program Managers will also be responsible for the preparation, ongoing management, and professional development of the AmeriCorps member teams to ensure that the impact of AmeriCorps members is maximized to provide the best student outcomes.</p>	<p align="center"><i>Primary Liaison to Each School Partner</i></p>
<p>Team Leaders: A senior AmeriCorps member who has the experience and demonstrated leadership to lead the team of AmeriCorps members throughout their daily student support services.</p> <p>The national City Year network: Performs ongoing research, evaluation, and development of its services across all sites, based on leading education research. All City Year teams will be supported by a national network of City Year staff and AmeriCorps members working on over 300 schools, who share best practices on regular basis.</p>	<p align="center"><i>Other Partnership Support Staff</i></p>



Appendix F: AmeriCorps Member Training and On-Going Professional Development

City Year uses a research-based experiential learning model to prepare AmeriCorps members to lead our educational interventions in schools, incorporating direct training, in-service observation and coaching, guided reflection, and frequent performance assessment and review. AmeriCorps members are trained by City Year staff, school staff, district professional development partners, and external experts. These trainings start before the beginning of the school year and continue throughout the year. A sample training calendar for AmeriCorps members is provided below (note: specific dates and duration of training activities for your AmeriCorps members may vary).

July: One Week National Staff Training

August: Two Week Basic Training Academy with Integrated District/School Practicum

September – January: Ongoing Professional Development

February: Three Day Advanced Training Academy

February – June: Ongoing Professional Development

Training topics include:

- Youth development and learning theory
- Literacy and math content, support, and intervention strategies aligned to district curriculum and priorities
- Attendance and behavioral support, and intervention strategies aligned to district priorities and programs
- Ongoing data management and analysis
- Understanding the Response to Intervention (RTI) model and early warning indicator system
- Student safety, codes of conduct, and student data security
- Building a culture of achievement in the classroom and throughout the school community
- Leveraging relationships with youth to boost achievement
- Understanding the underlying social factors that influence the local community
- Family engagement
- Partnering with teachers, instructional coaches, and administrators
- Developing positive, supportive relationships with youth to boost achievement
- AmeriCorps members' civic leadership development



Appendix G: Corporate Support for City Year

City Year partners with district leaders, school leaders, and teachers to provide students in low performing, high needs schools with the support they need to succeed. In doing so, our model is designed to provide additional human capital to support students as they progress from elementary through high school in order to continue to build the nation's urban graduation pipeline. As part of its service in schools, City Year works with a variety of external partners including, the Corporation for National and Community Service (AmeriCorps) and other federal entities, national and local philanthropies, corporate partners, and individual donors to bring additional resources into the schools where we work.

Corporate partners can provide support to City Year and its partner schools in three possible ways. First, they may provide financial support that makes it possible for City Year to provide its services at a reduced cost to schools. Second, corporate partners may operate their own community service and engagement programs that could benefit schools, students, and parents. Third, employees from corporate partners may be available to serve as school volunteers who can supplement the service of City Year AmeriCorps members at your schools.

Corporate partners will be subject to all relevant District and school policies. Subject to this condition, the District agrees to allow City Year to work with corporate partners to supplement its work under this Agreement.

Use of corporate volunteers to supplement City Year service

In conjunction with our AmeriCorps members, corporate volunteers are able to supplement a variety of Tier I attendance supports in your school, including joining in morning greetings, participating in attendance recognition programs, and leading community engagement events such as career fair nights. Volunteers can also supplement City Year's after-school programming, assist students with homework, provide students with additional tutoring and mentoring, and speak to students about career and professional paths.

Benefits of having corporate volunteers work with City Year in your schools include:

- Additional hands-on support for a greater number of underserved students who are in need of academic tutoring and extracurricular enrichment opportunities
- Help to broaden the horizon of our students by connecting them to careers and professionals that exist in their community and surrounding neighborhoods
- Connection to corporate partners and their employees who want to support schools and participate in meaningful, socially conscious activities

Corporate partners who serve as school volunteers will be subject to all District and school requirements regarding the activities of volunteers in schools.

Appendix H: Extended Learning and After School Program Activities

1. The District and City Year agree that for each of the schools covered by this Agreement whose Statement of Partnership includes After School Program activities, authorized representatives from each of the relevant schools and City Year shall meet to ensure safety protocols are agreed to, including, without limitation, student attendance and absence plans, arrival, headcount and dismissal procedures, student medical plans, emergency protocols and a requirement that each child participating in the After School Program, provide to City Year a waiver signed by the parent or guardian of such child acknowledging, among other things:
 - risks associated with extended learning in out-of-home settings, including the After School Program
 - that the child might be exposed to physical hazards, emotional demands, communicable diseases, weather conditions or other unanticipated events, none of which are the responsibility of City Year
 - authorizing the child to participate in the educational, athletic, and recreational programs of the After School Program
 - releasing and agreeing to hold harmless City Year, its employees, agents, officers, directors and all volunteers from any and all liability, loss or damage, actions, claims and demands which now have or which may hereafter arise from the child's participation in the routine activities of the After School Program
 - certifying that the child is in normal health, and is capable of participating safely in the educational, athletic and recreational programs of the After School Program, and
 - agreeing that should any injury occur to the child during participation in said After School Program, City Year is authorized to arrange for or to provide emergency medical treatment and to arrange for or provide transportation to the nearest qualified medical facility.

The District acknowledges City Year's right to refuse to allow a child to participate in the After School Program in the event of any material deviation from agreed upon safety procedures. The District agrees that each of the schools identified in the Deployment Plan shall make appropriate space available (classroom, gymnasium, outdoor play area and designated eating area) kept in safe, working order for City Year to render it's After School Program services.



Appendix I: Vote of the Sacramento City Unified School District.



Appendix J. Force Majeure

FORCE MAJEURE INSERT FOR NON-CITY YEAR FORM

If a party wishes to excuse performance under this Agreement as a consequence of an Event of Force Majeure (as defined below), it shall, subject to the Notice provisions of Article 12, as soon as possible following the occurrence or date of commencement of such Event of Force Majeure, notify the other party of the nature and expected duration of such Event of Force Majeure and shall thereafter keep the other Party informed until such time as, in its sole judgment, it is able to perform its obligations.

Neither the District nor City Year shall be considered in breach of this Agreement to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the effective date of this Agreement.

The Party (the "Affected Party") prevented from carrying out its obligations hereunder shall give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party.

Neither party shall be obliged to settle any strike, lock out, work stoppage, labor dispute or such other industrial action by its employees.

For purposes of this Agreement, "Event of Force Majeure" means an event beyond the control of the District and City Year, which prevents a party from complying with any of its obligations under this Agreement, including but not limited to:

- i. act of God (such as, but not limited to, pandemic fires, explosions, earthquakes, drought, tidal waves and floods);
- ii. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- iii. contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- iv. physical or geological conditions or the presence of hazardous materials or waste of a nature or in locations, quantities, concentrations or conditions which could not reasonably have been expected by the parties;
- v. riot, strike, lock out, work stoppage, labor dispute or such other industrial action or disorder, unless solely restricted to personnel of City Year; or
- vi. acts or threats of terrorism.

Should closure of a school serviced under this Agreement occur and last for an extended period of time (forty-five (45) calendar days or longer), City Year and the District shall meet and in good faith negotiate whether an amendment to the Agreement is needed to adjust dates and expectations under the Agreement, and to address the feasibility of each Party fulfilling its contractual obligations in light of such closure.

Irrespective of any extension of time, if an Event of Force Majeure occurs and its effect continues for a period of one hundred eighty (180) days, either the District or City Year may give to the other a notice of termination.

SERVICES AGREEMENT

Amendment No. 3

Date: June 3, 2022

Agreement between the Sacramento City Unified School District, hereinafter referred to as “District” and Vestra Labs, LLC, hereinafter referred to as “Contractor,” dated October 7, 2021 is amended as follows:

ARTICLE 2. TERM.

This Agreement shall commence on October 7, 2021, and continue through **June 30, 2023**, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Fee Rate: \$6,400 per full-time equivalent (FTE) per month of services as may be requested by District, not to exceed a maximum of **60 FTE** through July 31, 2022. From August 1, 2022 through June 30, 2023, services will not exceed a maximum of **30 FTE**. District will also reimburse Contractor for half of the cost of Live Scan fingerprinting services for all staff provided to the District. District shall not pay travel and other expenses. Total fee shall not exceed **Five Million One Hundred Eighty-Four Thousand Dollars (\$5,184,000)**, which represents an increase of \$2,496,000 to Amendment No. 2.

All fees are based on the starting of tiered deployment of technicians commencing on October 11, 2021 and will continue through July 31, 2022. From August 1, 2022 through June 30, 2023, the deployment will be reduced to 30 FTE.

Payment shall be made within 30 days upon submission of monthly invoices sent on or after the first business day after the month end to the attention of Rebecca Wall, Technician, Health Services Department at rebecca-wall@scusd.edu.

All other terms and conditions of the Agreement remain unchanged.

[signature page follows]



Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

VESTRA LABS, LLC

By: _____
Rose Ramos
Chief Business Officer

By: _____
Gilbert Rabin
President

Date

Date



Contract Proposal for Sac City Unified School District

Prepared for:

Rose Ramos Sac City Unified School District

Created by:

ATvantage Athletic Training

PROPOSAL DETAILS

All estimates are written with the Client's requests in mind, however, may include additional hours in an attempt to reach a round number or minimum purchase agreement. All estimates are "up to" amounts, with the client only being charged for hours used, not necessarily those estimated in the agreement.

ATvantage attempts to include all necessary hours in a single proposal to be more efficient and decrease workload on both parties in avoidance of re-writing for an additional hours. Client should attempt to include as many dates/ events as possible in the single proposal, potentially estimating higher, knowing all the hours may not be used.

ATvantage requests at least 2 weeks notice of all events or coverage needs. If this proposal is being agreed upon within a two week window, the possibility of securing coverage is reduced, unless otherwise stated.

Name	Rate	Total Hours	Subtotal
<input checked="" type="checkbox"/> Basic Coverage - 2 Year Package Year 1 & 2 - 920 hours x 6 schools = 5,520 hours 1 AT, avg of 22-24 hrs.week for 10 months Yr 1 Cost - 342,240	\$62.00	5,520	\$342,240.00
Total			\$342,240.00

ATvantage Agreement

This ATvantage Agreement (the "Agreement") is made on May 5, 2022 (the "Effective Date") by and between Sac City Unified School District (the "Principal"), and ATvantage LLC, a limited liability company (the "Agent" or "ATvantage") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Principal wishes to appoint the Agent as its agent who is uniquely qualified and experienced to furnish independently contracted certified athletic trainers (each an "Athletic Trainer" or "AT"); and

WHEREAS, the Agent agrees to accept such appointment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and representations contained in this Agreement, the Parties hereby agree as follows:

1. PURPOSE; APPOINTMENT.

The Principal hereby appoints the Agent as its agent for the purpose of assigning of an independent contractor certified athletic trainer for the Principal. Responsibilities as they may relate to sports medicine practices, specifically the prevention, evaluation, intervention, and/ or treatment of athletic injuries hereto (the "Duties") in such a manner as the Principal may hereafter instruct. The Agent hereby accepts the appointment and agrees to perform the Duties and act as the Principal's agent in accordance with the terms and conditions of this Agreement.

2. TERM.

This Agreement shall become effective as of May 5, 2022 and, unless otherwise terminated in accordance with the provisions of Section 10 of this Agreement, shall be for one year, and automatically renew for successive one (1) year periods thereafter, unless either Party gives written notice pursuant to Section 10 that the Agreement is to terminate (the "Term"); provided, however, that in no event shall this Agreement remain effective for longer than three (3) years.

As used in this Agreement, the word "Term" shall mean the full term of the Agreement, as it may be extended pursuant to this Section 2 or otherwise.

3. RESPONSIBILITIES; SCOPE OF AUTHORITY.

The Agent shall not represent itself as having any powers except those specified in this Agreement. Without limiting the foregoing, the Agent shall not have authority to provide contract services for any personnel outside of certified athletic trainers contracted with Agent; or otherwise obligate the Principal in any way except as stated in this Agreement or otherwise specifically authorized in writing by the Principal.

4. TERRITORY.

The Territory of the Agent shall not be limited.

5. COMPENSATION.

The total value for the Services pursuant to this contract shall not exceed \$342,200.00 unless otherwise agreed to by both parties. A deposit of 10% of the total contract amount is due within 14 days of contract signing and will serve as the first installment. Invoices each month thereafter, shall be broken into even installments based on the total remaining contract amount. Payment is due within 14 days after invoice is sent.

6. TAXES.

(a) Agent solely responsible for taxes. The Agent acknowledges that the Agent is not the Principal's employee and that the Agent is solely responsible for reporting and paying any tax or other cost assessed on the basis of the Principal's payment of compensation to the Agent under this Agreement.

(b) Principal will not withhold taxes. The Agent acknowledges and agrees that the Principal will not withhold any amount of compensation for the Agent's taxes, including but not limited to income tax, social security and Medicare tax, workers' compensation taxes or costs, unemployment compensation taxes or costs, or any other tax, cost, fee, or charge related to the Agent's compensation for services under this Agreement.

7. EXPENSES.

Subject to the Principal's prior approval, the Principal shall reimburse the Agent for expenses incurred by the Agent. Expense are to be approved on case by case basis, specifically in regard to Kit Fee (medical fee) or Ice Fee listed in Exhibit B or mileage reimbursement, as needed.

8. RECORDS.

During the Term and for a period of three (3) years thereafter, the Agent shall maintain complete and accurate books and records with respect to the performance of its Duties hereunder, which books and records shall include (but not be limited to) copies of orders and confirmations thereof, invoices, invoice approvals, supporting documentation, shipping and payment records, and injury report documentation. The Principal shall have the right to inspect and/or obtain copies of the Agent's books and records with respect to the Agent's Duties or the performance thereof under this Agreement, upon reasonable prior written notice to Agent.

Site Athletic Trainer will furnish proof of hours used after as requested by their Athletic Director and/ or Site Administrator.

9. DISCLOSURE OF STUDENT INFORMATION

The Agent is a covered entity for purposes of the Health Insurance Portability and Accountability Act ("HIPAA") and subject to 45 C.F.R. Parts 160 and 164 (the HIPAA Privacy Regulation"). Agent shall direct participants, and coaches providing supervision with the Agent as part of the Program, to comply with the policies and procedures of the Agent, including those governing the use and disclosure of individually identifiable health information under federal law, specifically the HIPAA Privacy Regulation. Solely for the purposes of defining the participants' and coaches' role in relation to the use and disclosure of Agent's protected health information, the participants and coaches are defined as members of the Agent's workforce, as that term is defined by 45 C.F.R. 160.103, when engaged in activities pursuant to this Agreement. However, the participants and coaches are not and shall not be considered to be employees of the Agent. The Principal will never access or request to access any Protected Health Information held or collected by or on behalf of the Agent by a participant or coach who is acting as part of the facility's workforce

10. INSURANCE.

The Agent must maintain general liability, professional liability, errors and omissions insurance in amounts of \$1 million/ incident, \$3 million aggregate. The Agent must provide the Principal with proof of insurance on the Principal's request and must immediately notify the Principal in writing if the Agent's insurance terminates, is cancelled, suspended, or changes materially, including but not limited to a change in the amount of insurance.

The Principal must maintain general liability, professional liability, errors and omissions insurance or bonds in amounts of \$1 million/ incident, \$3 million in the aggregate. The Principal must provide the Agent with proof of insurance on the Agent's request and must immediately notify the Agent in writing if the Principal's insurance terminates, is cancelled, suspended, or changes materially, including but not limited to a change in the amount of insurance.

The independent contractor athletic trainer will undergo Live Scan fingerprinting and/ or TB testing prior to reporting to the contract site and results will be transmitted to the district, if required, at the sole expense of the Principal.

11. TERMINATION.

This Agreement may be terminated:

1. By either Party on provision of thirty (30) days written notice to the other Party, with or without cause.
2. By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within thirty (30) days of receipt of written notice thereof.
3. By the Principal at any time and without prior notice, if the Agent is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the Principal, or is guilty of serious misconduct in connection with performance under this Agreement.
4. By the Agent at any time and without prior notice, if the Principal (or the Principal's representatives) is/are convicted of any crime or offense, fails or refuses to comply with any applicable laws, rules, regulations or policies, or is guilty of serious misconduct in connection with performance under this Agreement.

Following the notice of termination of this Agreement for any reason, the Principal shall promptly pay the Agent according to the terms for its performance of Duties before the effective date of the termination.

12. AMENDMENTS.

This Agreement may be amended only with the unanimous written consent of both Parties.

13. PARTIES' REPRESENTATIONS AND WARRANTIES.

The Parties hereby represent and warrant that:

1. Authority. Each Party is a legally existing entity with the authority to enter into this Agreement.
2. Compliance with Law. Each Party warrants that it has complied and will comply fully with all applicable laws, regulations, statutes, and ordinances.

14. INDEMNIFICATION.

Each Party will indemnify, hold harmless, and defend the other Party from and against any and all claims, litigations, losses, liabilities, costs, and other expenses incurred as a result of a material breach of the terms of this Agreement, or any act, error, or omission of the other Party.

15. USE OF TRADEMARKS.

Each Party grants the other Party a non-exclusive, limited license to use each other's name and logo with respect to promotion of the business relationship between the Parties. For example, Agent may use Principal's name and logo in its promotional material that it may present to other clients or potential clients, and Principal may use Agent's name and logo in any of its own material that it presents to parents, other students/participants.

The Parties recognize the right, title, and interest in and to all service marks, trademarks, and trade names used by the Parties and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair the Parties right, title, and interest therein, nor shall the Parties cause diminishment of the value of said trademarks or trade names through any act or representation. The Parties shall not apply for, acquire, or claim any right, title, or interest in or to any such service marks, trademarks, or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise.

16. RELATIONSHIP OF PARTIES.

The Agent is an independent contractor and is not an employee or partner of the Principal.

17. ASSIGNMENT.

Neither Party may assign this Agreement or any interest herein without the other Party's express prior written consent.

18. SUCCESSORS AND ASSIGNS

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties

19. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

20. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party as follows:

If to the Principal: Sac City Unified School District 5735 47th Ave Sacramento, CA 95824

If to the Agent: ATvantage Athletic Training 500 N Estrella Parkway St. B2 #475 Goodyear, AZ 85338

21. GOVERNING LAW; VENUE; ATTORNEY'S FEES.

This Agreement shall be governed by the laws of the state of Arizona, without regard to its conflicts of law provisions. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in

addition to any other relief to which the prevailing Party may be entitled. Venue for any cause of action arising will be in Maricopa County, Arizona.

22. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

23. SEVERABILITY.

If any provision of this Agreement is held to be invalid or unenforceable for any reason, (i) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision and (ii) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect.

24. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties concerning its subject matter and supersedes all prior discussions, agreements, and representations, whether oral or written, and whether or not executed by either Party. No modification, amendment, or other change may be made to this Agreement unless reduced to writing and executed by authorized representatives of both Parties.

25. HEADINGS.

The headings of sections in this Agreement are provided for convenience of reference only and are not intended to be a part of or affect the meaning or interpretation of this Agreement or any section.

26. ARBITRATION

The Parties agree that any dispute or controversy arising out of this Agreement shall be settled by Arbitration to be held in the state of Arizona, in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The Parties shall each pay one-half of the costs and expenses of such arbitration, and the non-prevailing Party shall pay all of the prevailing Party's reasonable counsel fees and expenses.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Principal

Agent

Sac City Unified School District

Name: Rose Ramos

Title: Chief Business Officer

Date: May 5, 2022

ATvantage LLC

Name: Alisha M Pennington

Title: Owner/Operator

Date: May 5, 2022

Exhibit A

Duties & Specifications

Scope of Work

ATvantage sources, interviews, places, and maintains the status of the athletic trainer throughout the length of the contract. We work alongside each individual site to understand their unique needs & desires for an athletic trainer, while educating them on necessary understandings in anticipation for their new staff member.

Athletic trainer are defined by the National Athletic Trainers' Association as "highly qualified, multi-skilled health care professionals who collaborate with physicians to provide preventative services, emergency care, clinical diagnosis, therapeutic intervention and rehabilitation of injuries and medical conditions. Athletic trainers work under the direction of a physician as prescribed by state licensure statutes." Any athletic trainer staffed by ATvantage will work within their scope of practice, as deemed by the Board of Certification, their level of professional training, and the state practice act, where applicable.

Agent Responsibilities:

- ATvantage will conduct a DOJ 7 year background check on all contracted Athletic Trainers prior to being scheduled for coverage. Livescan and/or TB testing can be accommodated, when requested, and will be the sole expense of the Principal.
- ATvantage requires that all contracted Athletic Trainers to have active professional liability (E&O) insurance as well as certifications for CPR, AED, and First Aid.
- ATvantage requires that all contracted Athletic Trainers to be certified and in good standing with the Board of Certification, as well as licensed or registered, where applicable.
- ATvantage carries professional liability insurance for contracted Athletic Trainers and company for entire duration of contract.
- ATvantage reasonably endeavors to provide a single Athletic Trainer at each site contracted, unless otherwise stated. In the event an Athletic Trainer becomes unavailable, for whatever reason, ATvantage will work to provide a substitute and/or alternative permanent replacement as quickly as possible.
 1. ATvantage will provide up to 3 candidates for the Principal to interview at their individual sites. We anticipate prompt feedback, which will be used in the selection of the Athletic Trainer to be placed at that site.
 2. Unless otherwise stated, ATvantage will endeavor to keep the current Athletic Trainer at their respective site year after year within a contract with the Principal.
- ATvantage will provide the Principal with a copy of an Emergency Action Plan within 4 weeks of placement of the Athletic Trainer, at the Principal's written request.
- ATvantage will provide monthly hours usage updates to Athletic Trainers and seasonal (every 3-4 months) updates on hours usage to the Principal or designated site personnel. Hours usage can be requested at any time in between those increments.
- For newly established positions or Athletic Trainers:
 1. Send satisfaction surveys around 4, 8, and 12 week mark, seeking feedback and understanding from the site on their satisfaction with the placement of their Athletic Trainer.
 2. Arrange for a mid-year site visit on campus to meet with administration of the site and the Athletic Trainer to understand how things are going.
- ATvantage will send an end of the year survey to all sites in the hopes of collecting information regarding how things went for the year and how they could be improved moving forward.
- ATvantage currently utilizes InjureFree, an electronic injury documentation and management software. The software is HIPAA and FERPA compliant and fully customized to ATvantage's needs. ATvantage may use any injury documentation and management software, so long as it complies with HIPAA and FERPA.
 1. Included features are: unlimited injury reports, single authorized user (Athletic Trainer), ability to send custom & confidential injury reports. Advanced features can include: return to play/ learn clearance, increased visibility to other users (coaches, admin, parents, physicians, etc) and custom forms. These features can be purchased through an exclusive offering from InjureFree to ATvantage customers, but are not included in the contract.
 2. InjureFree does not collect contact information for any students/ participants. Only first & last name is required, the

primary purpose is for management of injury report documentation.

3. As a result of this partnership, all contracts require 1 hour/ week to be allocated towards injury documentation within the software for decreased liability & ability to gauge "return on investment" at the end of contracts.

Athletic Trainer Responsibilities:

- Athletic Trainer will be responsible for own transportation to and from site, unless otherwise noted or requested by the Principal.
- Athletic Trainer will be available during all hours as outlined in this proposal.
- Athletic Trainer will provide care for all athletes equally.
- Athletic Trainer will work within their scope of practice, professional level of training, and/ or state practice acts, where applicable.
- Athletic Trainer will work directly with the designated site personnel (Athletic Director) to set up daily, weekly, monthly and/or seasonal schedule. It is the responsibility of both the designated site personnel and the Athletic Trainer to schedule out their hours appropriately.
- Reasonable additional duties, as deemed necessary by the Principal, especially as they relate to responses on Checklist.

Principal Responsibilities:

- Ensure that Consent to Treat is signed and received from all parents/ guardians of minors for the Athletic Trainer to administer ongoing care.
- If participants are minors, proof of Consent to Treat must be provided to ATvantage prior to scheduling of services. ATvantage reserves the right to review and request further information if the form provided does not meet HIPAA, FERPA, or legal language standards.
- Facilitate communication between ATvantage and designated personnel at each individual site, including but not limited to Athletic Director name & contact information as well as an administrator (principal or VP) with name and contact information.
 1. In the event these designated personnel cannot be reached, especially as it may pertain to summertime in anticipation of the placement of the Athletic Trainer, the District or Principal will be notified. If continued lack of communication occurs, ATvantage will move on to the placement of that athletic trainer at an alternative site until communication can be established.
 2. Principal should respond to correspondence from ATvantage in a timely manner (within 72 hours), especially as it pertains to the placement of an Athletic Trainer, the acquisition of supplies or equipment, and any conflict resolution concerns.
- Provide support of ATvantage contracted Athletic Trainers and staff with a healthy work environment. Including but not limited to:
 1. Acknowledgment of the Athletic Trainer as an allied healthcare professional. Does not bully, intimidate, or threaten the Athletic Trainer especially as it may relate to their healthcare practices or decision making regarding injuries and/or concussion.
 2. A permanent designated workspace or location for the Athletic Trainer that is protected from the elements (ideally indoor), where all athletes (both genders) can access them, space for taping, evaluation, or rehabilitation and that has a locking door for both supplies within a cabinet and/or the primary access door. Athletic Trainer should be provided keys to this space and access to the room should be limited to designated personnel only.
 1. Though not required, this space would also have access to running water (for washing hands in between patient visits), cooled and/or heated air for care of illness, and close proximity to an ice machine.
 2. Space should have access to internet for the Athletic Trainer to utilize for record keeping and injury documentation. The Principal may provide access to a computer within this space, at their convenience.
 3. Overall condition of the space should be considered in relation to its use as a healthcare facility, meeting the requirements of OSHA standards, ADA requirements, sanitation, and general facility management. (Athletic Training professional recommendations on facility management can be found here.)
- Protection of their professional opinion, especially in how it may relate to communication with coaches or parents. The Athletic Director may be called upon to act as a mediator between coaches or parents in relation to healthcare decisions on behalf of the Athletic Trainer.

1. Ongoing communication with the athletic trainer, especially as it pertains to the creation or editing of a schedule, the acquisition of supplies or equipment, injury reports & updates, or other pertinent information.
- Establish a supplies budget for necessary items and materials to be purchased for the Athletic Trainer to work effectively. Budget for supplies to be identified prior to placement of Athletic Trainer and supplies order to be made within 2 weeks of placement of Athletic Trainer at a site.
 1. Athletic Trainer and ATvantage can provide recommendations on supplies needed and purchasing options, as needed. Purchases should be made as soon as possible, especially in the event that a site doesn't already have supplies or the Athletic Trainer is going without.
 1. Every effort will be made to work alongside the Principal to establish a budget that allows for necessary supplies while respecting the monies allotted. In the event an Athletic Trainer or ATvantage has not been notified of the supplies budget or intention to purchase supplies, communication to the Principal or district will be made. If no response is received, supplies will be purchased by ATvantage and the Principal will have that amount deducted from their total contract in hours.
 2. Supplies to include but are not limited to a medical kit, first aid materials, emergency supplies such as splints, slings, or ACE bandages, and rehabilitation equipment, as needed.
 3. All sites must have a functioning ice machine, accessible to the athletic trainer daily.

Supplies Budget and Purchasing Information:

Do you have at least \$2500/site designated for supplies costs available to the athletic trainer?

Would you like for ATvantage to facilitate purchasing supplies (sending quotes out for bid, purchasing supplies, invoicing for costs):

If No, please indicate who will responsible for overseeing supplies purchase:

Accounting and/ or Purchasing Department Contact Information:

Is PO required to render services?

If Yes, complete Purchasing information.

Accounting Contact Name & Title

Purchasing Contact Name & Title

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Sac City Unified School District

ATvantage LLC

Name: Rose Ramos

Title: Chief Business Officer

Date:

Name: Alisha M. Pennington

Title: Owner/Operator

Date:

FACILITIES LEASE

For all or a portion of the following Sites:

Albert Einstein MS Reroofing and HVAC Replacement Project #0410-453

Recorded Address: **9325 Mirandy Dr. Sacramento, CA 95826**

Physical Address: **9325 Mirandy Dr. Sacramento, CA 95826**

APN: **060-0420-003-0000**

Fern Bacon MS Reroofing and HVAC Replacement Project #0431-453

Recorded Address: **4140 Cuny Ave. Sacramento, CA 95823**

Physical Address: **4140 Cuny Ave. Sacramento, CA 95823**

APN: **039-0100-002-0000**

John Still MS Reroofing and HVAC Replacement Project #0445-453

Recorded Address: **2250 John Still Dr. Sacramento, CA 95832**

Physical Address: **2250 John Still Dr. Sacramento, CA 95832**

APN: **052-0300-002-0000**

By and between

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

And

Swinerton Builders
15 Business Park Way, Suite 101
Sacramento, CA 95828
Dated as of May 26, 2022

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	2
2. Exhibits.....	3
3. Lease of Project and Site.....	3
4. Term	4
5. Payment	5
6. Title.....	5
7. Quiet Enjoyment	5
8. Representations of the District	5
9. Representations of the Developer	6
10. Pre-construction Services	7
11. Construction of Project.....	15
12. Maintenance	16
13. Utilities	16
14. Taxes and Other Impositions	16
15. Insurance.....	17
16. Indemnification and Defense	23
17. Eminent Domain	25
18. Damage and Destruction.....	26
19. Abatement	26
20. Access	26
21. Assignment, Subleasing	27
22. Termination, Default And Suspension.....	27
23. Notices	35
24. Binding Effect	36
25. No Additional Waiver Implied by One Waiver	36
26. Severability	36
27. Amendments, Changes and Modifications	36
28. Net-Net-Net Lease.....	36
29. Execution in Counterparts	37
30. Developer and District Representatives	37
31. Applicable Law	37
32. Attorney's Fees	37
33. Captions	37

34.	Prior Agreements	37
35.	Further Assurances.....	37
36.	Recitals and Exhibits Incorporated	37
37.	Time of the Essence	37
38.	Force Majeure.....	38
39.	Interpretation	38

Exhibits A - H

**FACILITIES LEASE (One for each
RFQ/P#)**

This facilities lease ("Facilities Lease"), dated as of May 26, 2022 ("Effective Date"), is made and entered into by and between Swinerton Builders ("Developer"), a California corporation duly organized and existing under the laws of the State of California, as sublessor, and Sacramento City Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

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

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at 9325 Mirandy Dr., Sacramento, CA 95826, known as Albert Einstein Middle School, 4140 Cuny Ave., Sacramento, CA 95823, known as Fern Bacon MS, 2250 John Still Dr., Sacramento, CA 95832, known as John Still MS, 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 Albert Einstein MS, Fern Bacon MS, John Still MS Project ("Project"); and

WHEREAS, District has retained HMR 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 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 to 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 Swinerton Builders, a [California corporation], organized and existing under the laws of the State of [California], Contractor's license number 92 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 Sacramento City Unified School District, a school district duly organized and existing under the laws of the State of California.

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

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

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

1.6.2 The Site Lease.

1.6.3 This Facilities Lease.

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

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

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.

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:

10.1.3.1.1 Overhead and profit;

10.1.3.1.2 Supervision;

10.1.3.1.3 General conditions;

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

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

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

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

10.1.3.1.8 Demolition;

10.1.3.1.9 Installation;

10.1.3.1.10 Rough-in;

10.1.3.1.11 Finishes;

10.1.3.1.12 Testing;

10.1.3.1.13 Owner and Maintenance Manuals; and

10.1.3.1.14 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 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**

It is hereby understood and agreed that the Contract Time for this Project shall be [days in words] ([days in numbers]) 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 [Date] ("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 One Thousand Five Hundred Dollars (\$ 1,500.00) 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

15.1.8 Insurance Policy Limits

The limits of insurance shall not be less than the following amounts *and for those subcontractors whose subcontract does not exceed \$1,000,000 shall not be less than the following amounts:*

Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	Developer: \$2,000,000 per occurrence; \$4,000,000 annual aggregate Subcontractors: \$1,000,000 per occurrence; \$2,000,000 annual aggregate
Excess Liability		Developer: \$10,000,000 per occurrence; \$10,000,000 annual aggregate Subcontractors: \$1,000,000 per occurrence; \$2,000,000 annual aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000 (limits may be met with Excess Liability Policy required herein) Subcontractors: \$1,000,000
Workers’ Compensation		Statutory limits pursuant to State law
Employer’s Liability		\$1,000,000 Subcontractors: \$1,000,000
Builder’s Risk		Replacement Cost
Pollution Liability		\$2,000,000 per occurrence; \$2,000,000 annual aggregate

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.

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:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Attn: _____

If to Developer:

Swinerton Builders
15 Business Park Way, Suite 101, Sacramento, CA 95828
Attn: Jeff Good, Vice President | Division Manager

With a copy to:

Deidree Sakai, Esq.
Dannis Woliver Kelley
200 California Street, Suite 400
San Francisco, CA 94111

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: May 26, 2022

Sacramento City Unified School District

Swinerton Builders

By: _____

By:  _____

Name: _____

Name: Jeffrey Good _____

Title: _____

Title: Vice President | Division Manager _____

EXHIBIT A (REQ/P#0431-453)

LEGAL DESCRIPTION OF SITE

Fern Bacon MS Reroofing and HVAC Replacement Project #0431-453
Recorded Address: 4140 Cuny Ave. Sacramento, CA 95823
Physical Address: 4140 Cuny Ave. Sacramento, CA 95823
APN: 039-0100-002-0000



MBJ/JK

Project No: RQ MFY 222229

Parcel No: 42-170-01

COUNTY OF SACRAMENTO
DEPARTMENT OF PUBLIC WORKS
REAL ESTATE DIVISION

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____ 197____, by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as the "First Party" and SACRAMENTO CITY UNIFIED SCHOOL DISTRICT OF SACRAMENTO, a political subdivision of the State of California hereinafter referred to as the "Second Party".

WITNESSETH:

WHEREAS a Right of Way Deed has been executed and delivered by Second Party to First Party, covering the following described property:

All that portion of the Southwest one-quarter of Section 32, Township 8 North, Range 5 East, M.D.B. & M., described as follows:

BEGINNING at the point of intersection of the Easterly right of way line of Franklin Boulevard, a public road, and the North property line of Parcel 1 as said parcel is so designated on that certain Grant Deed recorded in the office of the Recorder of Sacramento in Book 3141 of Official Records, Page 628, from which the Southwest corner of Section 32 bears the following three (3) courses and distances: (1) North 89° 50' 40" West 54.29 feet; (2) South 22° 46' 35" East 2788.05 feet; and (3) South 89° 50' 20" West 1482.93 feet; thence from said point of beginning along said Easterly right of way line South 22° 46' 35" East 11.81 feet; thence North 67° 13' 25" East 9.00 feet; thence North 22° 46' 35" West 8.00 feet to a point on said North property line; thence along said North property line North 89° 50' 40" West 9.77 feet to the point of beginning, containing 0.002 acres, more or less.

EXHIBIT A (REQ/P#0410-453)

LEGAL DESCRIPTION OF SITE

Albert Einstein MS Reroofing and HVAC Replacement
Project #0410-453

Recorded Address: 9325 Mirandy Dr. Sacramento, CA
95826

Physical Address: 9325 Mirandy Dr. Sacramento, CA 95826

APN: 060-0420-003-0000

DESCRIPTION

All that real property situate in the County of Sacramento, State of California, described as follows:

All that portion of the Northwest one-quarter of Section 17, Township 8 North, Range 6 East, Mount Diablo Meridian, shown as "Sacramento City Unified School District" upon that certain Record of Survey filed in the office of the Recorder of Sacramento County, California, in Book 21 of Surveys, at Page 20, and being particularly described as follows:

BEGINNING at a point in said Section 17 from which point of beginning the southwest corner of the northwest one-quarter of said Section 17 bears the following two courses: (1) South 00°07'56" East 300.09 feet to a point on the centerline of Kiefer Boulevard (formerly Middle Jackson Road) and on the south line of the northwest one-quarter of said Section 17, and thence (2), along the centerline of said Kiefer Boulevard and along the south line of the northwest one-quarter of said Section 17, South 89°37'00" West 16.50 feet distant; thence, FROM SAID POINT OF BEGINNING, parallel with the west line of said Section 17, North 00°07'56" West 740.02 feet; thence, the following ten (10) courses:

1. North 89°33'10" East 318.50 feet; thence,
2. curving to the left on the arc of a tangent curve having a radius of 785.00 feet, said arc being subtended by a chord bearing North 67°37'35" East 586.26 feet to a point; thence, on the southeasterly prolongation of a radial line of said curve through said point,
3. South 44°18'00" East 624.00 feet; thence,
4. curving to the right on the arc of a tangent curve having a radius of 415.00 feet, said arc being subtended by a chord bearing South 22°22'25" East 309.93 feet; thence,
5. tangent to the preceding curve, South 00°26'50" East 100.00 feet; thence,
6. from a tangent that bears South 89°33'10" West, curving to the left on the arc of a curve having a radius of 685.00 feet, said arc being subtended by a chord bearing South 85°34'35" West 95.00 feet; thence,
7. tangent to the preceding curve, South 81°36'00" West 370.00 feet; thence,
8. curving to the left on the arc of a tangent curve having a radius of 1444.00 feet, said arc being subtended by a chord bearing South 77°01'55" West 230.01 feet to a point of reverse curve; thence,
9. from a tangent that bears South 72°27'50" West, curving to the right on the arc of a tangent curve having a radius of 312.43 feet, said arc being subtended by a chord bearing South 81°00'30" West 92.84 feet; thence,
10. tangent to the preceding curve, South 89°33'10" West 636.90 feet TO THE POINT OF BEGINNING, and containing 22.700 acres of land, more or less.

SUBJECT TO EXISTING RIGHTS OF WAY AND EASEMENTS OF RECORD.

Prepared by:

Timothy S. Train
Timothy S. Train
Licensed Surveyor No. 2457

July 15, 1982



EXHIBIT A (REQ/P#0445-453)

LEGAL DESCRIPTION OF SITE

John Still MS Reroofing and HVAC Replacement Project #0445-453

Recorded Address: **2250 John Still Dr. Sacramento, CA 95832**

Physical Address: **2250 John Still Dr. Sacramento, CA 95832**

APN: **052-0300-002-0000**

Legal Description

Parcel B, Parcel Map Book 52, Page 7

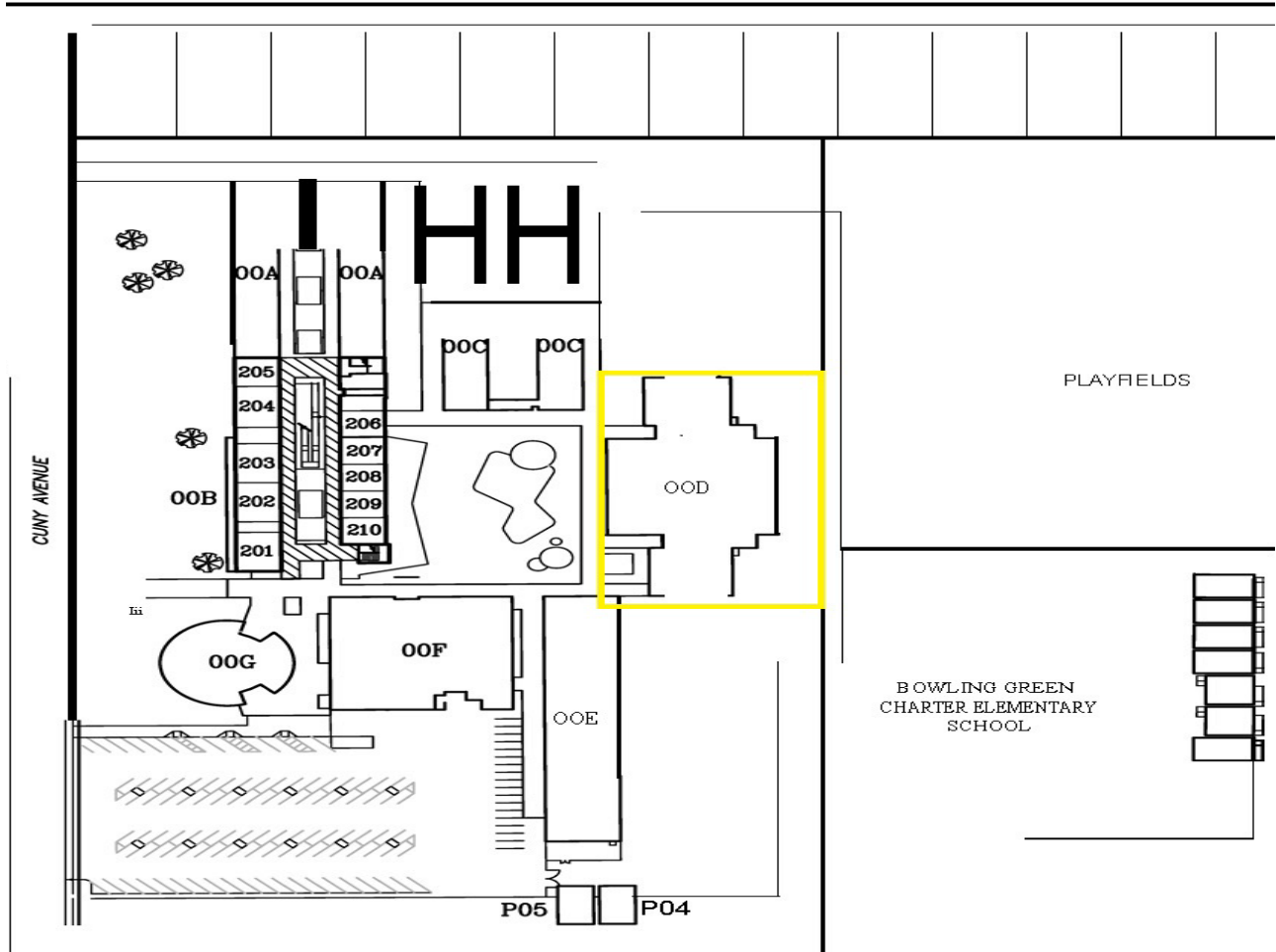
EXHIBIT B.

DESCRIPTION OF PROJECT

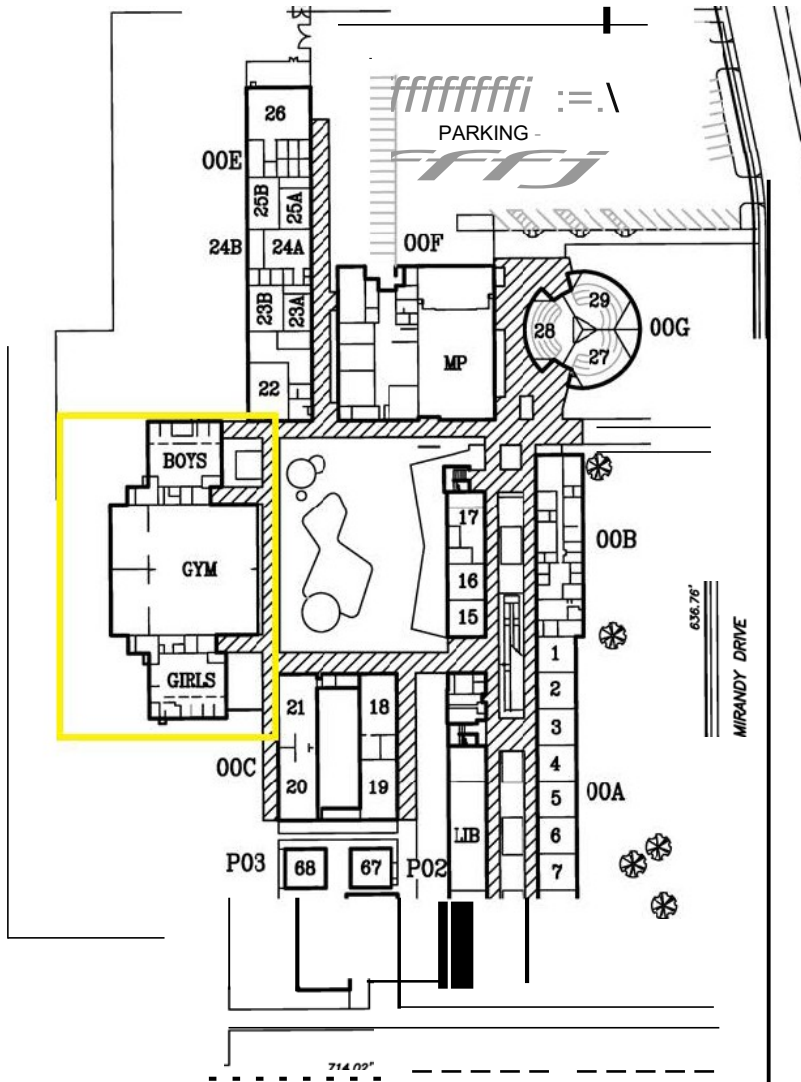
(One for each RFO/P#)

Attached is a map or diagram of the Site that is subject to this Facilities Lease and upon which Developer will construct the Project as shown in the areas highlighted in yellow.

Fern Bacon MS RFO/P#0431-453



Reroofing and HVAC Replacement Project



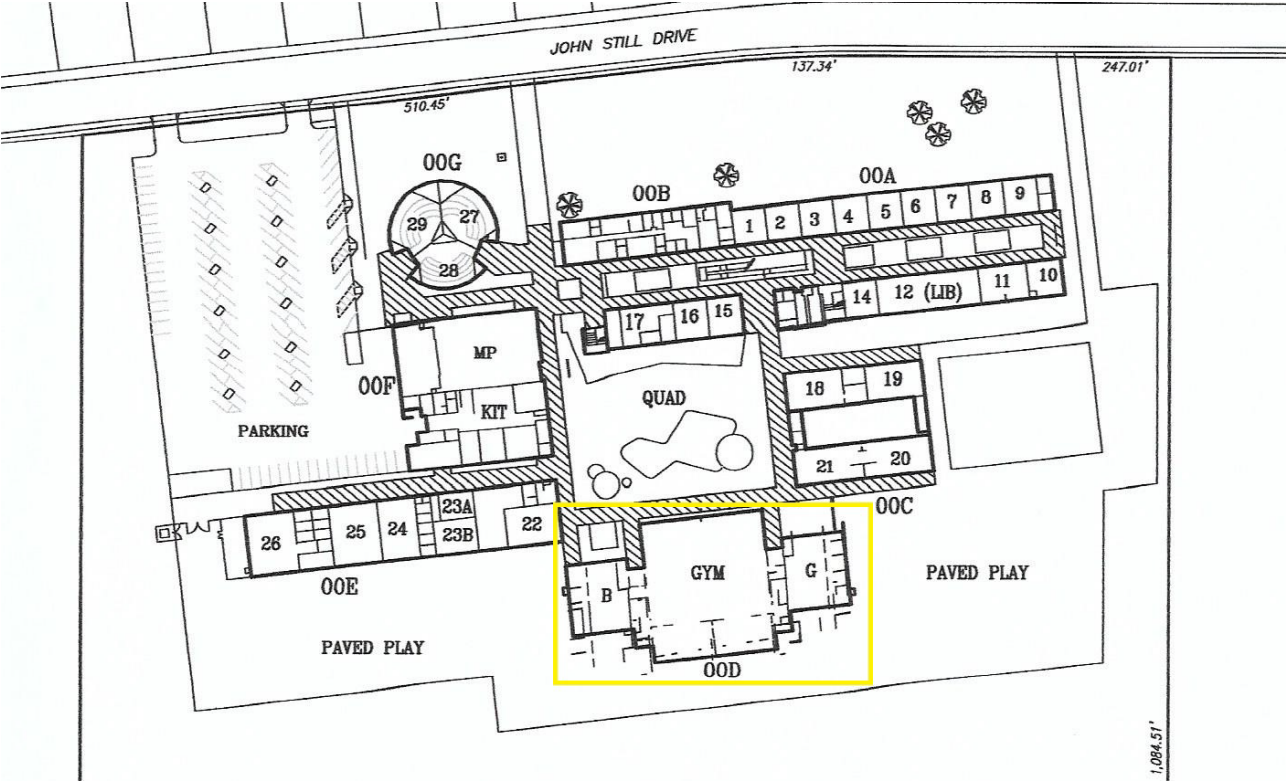


EXHIBIT C (One for each REQ/P#)

**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 preconstruction services are completed ("Guaranteed Maximum Price"). The Guaranteed Maximum Price shall include the preconstruction fees and costs.

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 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 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 Developer of wages of construction workers, excluding all salaried and/or administrative personnel, directly employed by 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 Developer's field supervisory, safety and administrative personnel when stationed at the site or stationed at 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 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 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 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 Developer. Cost for items previously used by 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

Developer at the site, whether rented from 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 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	
Total Allowance Amount	

The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Developer's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Guaranteed Maximum Price, and are not subject to adjustment regardless of the actual amount of the Allowance Item.

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 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 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 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 Developer and only to the extent that the cost of repair or correction is not recovered by 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 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 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 Developer's capital expenses, including interest on Developer's capital employed for the Work.

2.1.6.5 Costs that would cause the Guaranteed Maximum Price (as adjusted by Change Order) to be exceeded.

2.1.7 Developer's Fee

Two percent (2 %) 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 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 Contingency is not intended for such things as scope changes.

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

2.1.9.4 The unused portion of the 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 Loan Amount for the Lease Payments ever exceed the Guaranteed Maximum Price to be defined, as may be modified pursuant to **Exhibit D** to the Facilities Lease.

2.4 Changes to Guaranteed Maximum Price

2.4.1 The Parties acknowledge that the Guaranteed Maximum Price is based on the Construction Documents, including the plans and specifications, as identified in **Exhibit D** to the Facilities Lease.

2.4.2 As indicated in the Facilities Lease, the Parties may add to or remove from the project specific scopes of work. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Maximum Price. If a cost impact of a change is agreed to by the Parties, it shall be paid upon the payment request from Developer for the work that is the subject of the change in accordance with the provisions of **Exhibit D**. The amount of any change to the Guaranteed Maximum Price shall be calculated in accordance with the provisions of **Exhibit D** to this Facilities Lease.

2.4.3 The Parties agree to reduce the Guaranteed Maximum Price for the unused portion of Allowances and/or 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. In the event Developer realizes a savings on any aspect of the Project, such savings shall be added to the Contingency and expended consistent with the Contingency. In addition, any portion of Allowance remaining after completion of the Project shall be added to the Contingency. If any cost savings require revisions to the Construction Documents, Developer shall work with the District and Architect with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. Developer shall be entitled to an adjustment of Contract Time for delay in completion caused by any cost savings adopted by District pursuant to **Exhibit D**, if requested in writing before the approval of the cost savings.

2.4.5 If the District exercises its Purchase Option pursuant to this **Exhibit C**, any reduction in the Guaranteed Maximum Price resulting from that exercise of the Purchase Option, if any, shall be retained in full by the District and shall not be shared with Developer.

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 Loan Amount for the Lease Payments ("Tenant Improvement Payments"). The District shall withhold a amount equal to the Loan Amount as indicated in **Attachment 3** to **Exhibit C** from the Developer for its Work on the Project. In other words, no further Tenant Improvement Payment will be made to Developer once the amount equal to Guaranteed Maximum Price minus the Loan Amount has been paid. Otherwise, the Tenant Improvement Payments will be processed based on the amount of Work performed according to 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 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 Developer completes the Project and the District accepts the Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK; ATTACHMENTS TO FOLLOW]

ATTACHMENT 1
GENERAL CONDITIONS COSTS

ATTACHMENT 2
GUARANTEED MAXIMUM PRICE

To be attached.

ATTACHMENT 3
SCHEDULE OF LEASE PAYMENTS

Amortization Schedule

Loan Amount: \$
Interest: 4.25% Annual
Term in Months 12.00
Payment Frequency Monthly

	<u>Payment</u>	<u>Monthly Payment</u>	<u>Principal Payment</u>	<u>Interest Payment</u>	<u>Balance</u>
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
Totals					

EXHIBIT D (One for each RFQ/P#)

GENERAL CONSTRUCTION PROVISIONS

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

EXHIBIT D-1 (One for each RFQ/P#)

SPECIAL CONDITIONS

Attached are the special terms and conditions for the Project.

EXHIBIT E
(One for
each
RFO/P #)

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between _____ (“Developer”), as Lessor, and the Sacramento City Unified 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 [City], 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____

Sacramento City Unified School District

[Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT F (One for each RFQ/P#)

CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

[To Be Attached.]

EXHIBIT G (One for each RFQ/P#)

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be Attached.]

Exhibit H to Facilities Lease
PROJECT LABOR AGREEMENT

for the

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

PREAMBLE

This Project Labor Agreement (“Agreement”) is entered into by and between the Sacramento City Unified School District (“District”), together with contractors and/or subcontractors, who shall become signatory to this Agreement by signing the “Agreement To Be Bound” (Attachment A), and the Sacramento-Sierra Building & Construction Trades Council (“Council”) and the local Unions that have executed this Agreement.

RECITALS

WHEREAS, the purpose of this Agreement is to promote efficiency of construction operations during the construction of the District’s projects subject to this Agreement, and to provide for the peaceful settlement of labor disputes and grievances without work disruptions or delays, thereby promoting the District’s interest and the public’s interest in assuring the timely and cost-effective completion of the District’s construction projects; and

WHEREAS, the successful and efficient completion of the District’s construction projects is of the utmost importance to the District and its educational programs and mission; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the Unions affiliated with the Council; and

WHEREAS, it is recognized that District construction projects require multiple contractors and bargaining units on the job site at the same time over an extended period of time, and that the potential for work disruption is substantial in the absence of a binding commitment to maintain continuity of work; and

WHEREAS, the Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the construction projects subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the parties to this Agreement; and

WHEREAS, the District desires to provide construction training and employment opportunities for students of and residents within the District through local hire, apprentice and pre-apprentice programs; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory and successful completion of all District construction projects subject to the Agreement; and

WHEREAS, the Sacramento City Unified School District has previously adopted Resolution No. 2774 regarding the use of Project Labor Agreements on District projects.

NOW, THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, do mutually agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 “Agreement” means this Project Labor Agreement.
- 1.2 “Agreement to be Bound” means the agreement (attached hereto and incorporated herein as Attachment A) required to be executed by any Employer(s) working on the Project as a precondition to performing Covered Work on the Project.
- 1.3 “Council” means the Sacramento-Sierra Building and Construction Trades Council, which is the local jurisdictional division of the State Building and Construction Trades Council of California, with affiliated trades unions within its geographical jurisdiction of Sacramento, Yolo, Placer, El Dorado, Amador, Nevada and Sierra Counties.
- 1.4 “Completion” means the point at which there is Final Acceptance by the District of a Construction Contract. For purposes of this definition of “Completion,” “Final Acceptance” shall mean that point in time at which the District has determined upon final inspection that the work on a Construction Contract 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, except as to section 2.5 (exclusions from Covered Work) public works or improvement contracts approved by the District, including design-bid, design-build, lease-leaseback or other contracts under which construction work is performed, that are necessary to complete the Project.
- 1.6 “District” means the Sacramento Unified School District and the administrative employees under its Superintendent, including any in house Project Manager designated by the District for the Project.
- 1.7 “Contractor(s)” means any person, firm, corporation, or other entity, or any combination thereof, including joint ventures, and any of its contractors or subcontractors of any tier, or any successor or assigns of such persons or entities, that has entered into a contract with the District, or with any other person or entity contracting for work on the Project on behalf of the District (whether by design-bid, design-build, lease-leaseback or other means), with respect to the construction of any part of the Project under contract terms and conditions approved by the District.

- 1.8 “Master Agreement” means the multi-employer collective bargaining agreement of each of the Unions that covers the geographic area of the Project, copies of which shall be provided to the District upon request.
- 1.9 “Project” means any District construction project that has a total minimum value of five hundred thousand (\$500,000) or more. The District may, at its discretion, designate other projects or contracts with a total value of less than five hundred thousand (\$500,000) to be covered by this Agreement if the District believes it is in the best interest of the District to do so. Routine maintenance of District properties are not covered by the scope of this Agreement.
- 1.10 “Project Manager” means a person, including a District employee, firm or other entity designated by the District to manage, coordinate or administer the construction work on a Project subject to this Agreement.
- 1.11 “Union” or “Unions” means the Sacramento-Sierra Building and Construction Trades Council and the local Unions that are 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. The Council and the local Unions are collectively referred to herein as the “Unions.”

ARTICLE 2

SCOPE OF AGREEMENT

- 2.1 Parties. This Agreement shall apply and is limited to all Contractor(s), the District and the Unions that are signatory to this Agreement.
- 2.2. Applicability. This Agreement shall govern all Construction Contracts awarded on the District Projects that are subject to this Agreement. Except for exclusions from the Covered Work described in section 2.5, for purposes of this Agreement, a Construction Contract shall be considered completed as described in Section 1.4, except when the District’s authorized representative directs a Contractor to engage in repairs, warranty work, or modifications as required under the original Construction Contract with the District.
- 2.3 Covered Work. This Agreement covers all on-site construction, alteration, 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, start-up and commissioning, site preparation, survey work, soil and material inspection and testing, modular furniture installation covered by an applicable Master Agreement or a prevailing wage determination, all on-site fabrication work, provided such work is within the fabrication provision of the Master or national agreement of one of the Unions, demolition of existing structures, and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. On-site fabrication work includes work done for the Project in temporary

yards or areas near the Project. This Agreement also covers all off-site work, including fabrication, traditionally performed by any of the Unions that is directly or indirectly part of the Project, provided such work is covered by a provision of a local Master Agreement of the applicable Union(s). On-site construction shall also include the site of any batch plant constructed solely to supply materials to the Project. The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting, however, the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process, as well as the off-hauling of debris and excess fill and/or mud shall be covered by the terms and conditions of this Agreement. All of the work described in this Section is within the scope of this Agreement and is referred to hereafter as "Covered Work."

2.5 The following shall be excluded from Covered Work:

- 2.5.1 Work of non-manual employees, including, but not limited to, superintendents, supervisors above the level of general foreman (except those covered by any applicable Master Agreement), staff engineers, building inspectors, timekeepers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, executive and management employees;
- 2.5.2 Equipment and machinery owned or controlled and operated by the District;
- 2.5.3 Any work performed on or near or leading to or on to the site of work covered by this Agreement and undertaken by state, county, city or other governmental bodies, or their contractor, or by public utilities or their contractors;
- 2.5.4 Off-site maintenance of leased equipment and on-site supervision of such work;
- 2.5.5 Work performed by employees of a manufacturer or vendor on the manufacturer's or vendor's equipment if necessary to satisfy the guarantee or warranty on such equipment and where performance of the work is expressly stated in the manufacturer's or vendor's written warranty or guarantee to be a condition for the warranty or guarantee for such products. For any work performed pursuant to this provision, the Contractor shall provide copies of the written warranty requirement to the District, Project Manager, the Council and the affected local Union prior to the commencement of work by the manufacturer or vendor. This exclusion does not apply to any on site construction work subcontracted by such manufacturer or vendor.
- 2.5.6 Off-site maintenance of leased equipment and on-site supervision of such work;

- 2.5.7 Laboratory or specialty testing or inspection not covered by an applicable Master Agreement;
- 2.5.8 Non-construction support services contracted by the District or any Contractor in connection with this Project;
- 2.5.9 All work by employees of the District.

ARTICLE 3

SUBCONTRACTING

- 3.1 Each Contractor agrees that it will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing Attachment A, the Agreement to be Bound.
- 3.2 Each Contractor agrees that it will contract or subcontract the performance of Covered Work only to a person, firm, corporation or other entity that is or becomes a party to this Agreement. Any Contractor performing Covered Work on the Project shall, as a condition to working on the Project, perform all work under the terms of this Agreement and the applicable Master Agreement. Before being authorized to perform any Covered Work, Contractors shall become a party to this Agreement by signing Attachment A, the Agreement to be Bound. Every Contractor shall notify the Council in writing within five (5) business days after it has contracted to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work in accordance with Section 3.1 or this Section 3.2, and shall at the same time provide to the Council a copy of the executed Agreement to be Bound. The District shall also provide copies to the Council of all executed Agreements to be Bound that it receives within fifteen (15) days of receipt.
- 3.3 Nothing in this Agreement shall in any manner whatsoever limit the rights of the District or any Contractor to subcontract Covered Work or to select its contractors or subcontractors; provided, however, that all Contractors, at all tiers, assigning, awarding, contracting or performing Covered Work, or authorizing another to assign, award, contract or perform Covered Work, shall be required to comply with the provisions of this Agreement. Each Contractor shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the assigning, awarding or subcontracting of any Covered Work, or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement. Any Contractor that fails to provide the Council with the Agreement to be Bound executed by its contractor or subcontractor shall be liable for any failure of that contractor or subcontractor, or any contractor or subcontractor at a lower tier, to comply with the provisions of this Agreement, including any contributions to any trust funds that the contractor or subcontractor, or any subcontractor to that subcontractor, fails to make. 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 on the Project.

- 3.4 Nothing in this Agreement shall limit the District's right to combine, consolidate, or cancel contracts for Project construction, or to comply with public agency contracting laws.

ARTICLE 4

WAGES AND BENEFITS

- 4.1 All employees covered by this Agreement (including foremen and general foremen if they are covered by the Master Agreement) shall be classified and paid wages and other compensation, including but not limited to travel, subsistence, and shift premium pay, and contributions made on their behalf to multi-employer trust funds, all in accordance with the then current multi-employer Master Agreement of the applicable Union and in compliance with the applicable prevailing wage rate determination established pursuant to the California Labor Code by the Department of Industrial Relations.
- 4.2 During the period of construction on this Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining parties on the effective date as set forth in the applicable Master Agreement. The Unions shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

ARTICLE 5

NO STRIKES - NO LOCKOUTS

- 5.1 During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, picket-related hand billing, slow downs, interference with the work or other disruptive activity for any reason by the Union or by any employee, and there shall be no lockout by any Contractor. Failure of any Union or employee to cross any picket line established at the Contractor's Project site is a violation of this Article.
- 5.2 The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and, if justifiably

discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than ninety (90) days.

- 5.3 The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppages, the signatory Unions shall consider such work stoppage or picketing to be illegal and refuse to honor such picket line or work stoppage.
- 5.4 In the event of any work stoppage, strike, sympathy strike, picketing interference with the work or other disruptive activity in violation of this Article, the Contractor may suspend all or any portion of the Project work affected by such activity at the Contractor's discretion and without penalty, and the District may replace any Contractor whose employees have not reported to work with any other contractor or subcontractor in accordance with Section 3.2.
- 5.5 In addition to any other action at law or equity, any party may elect to have the matter decided by a neutral arbitrator in accordance with the following procedure when a breach of this Article is alleged, after the Union(s) or Contractor(s) has been notified of the fact.
 - 5.5.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then the American Arbitration Association shall select an alternative arbitrator within 24 hours of notice. Notice to the Arbitrator shall be by the most expeditious means available, with notice by fax or electronic means or any other effective written means to the party alleged to be in violation and the involved International Union President and/or local Union.
 - 5.5.2 Upon receipt of said notice, the Project Manager shall contact the designated 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.
 - 5.5.3 The Arbitrator shall notify the parties by fax or electronic means or any other effective written means of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.
 - 5.5.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award which shall be final and binding shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article by the Union or Contractor, 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) for the first shift for which it failed to comply, or portion thereof, and ten thousand dollars (\$10,000) for each subsequent shift for which it failed to comply, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this Section.

- 5.5.5 Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. The fax or electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 5.5.4 of 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 by delivery to their last known address or by certified mail.
- 5.5.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.
- 5.5.7 The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.
- 5.6 The procedures contained in Section 5.5 shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article 9.
- 5.7 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the District and the Contractor(s) three (3) business days' notice when nonpayment of trust fund contributions has occurred and one (1) business day's 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(s) or their subcontractor's workforce, during which time the Contractor shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article. In the event the Union or any of its members withhold their services from such contractor or subcontractor, District shall have the right to

replace such contractor or subcontractor with any other contractor or subcontractor who executes the Agreement to be Bound.

- 5.8 It will not be a violation of this Agreement when the Contractor considers it necessary to shut down to avoid the possible loss of human life because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor requests employees to wait in a designated area available for work, the employees will be compensated for the waiting time.
- 5.9 If a Master Agreement expires before the Contractor completes the performance of work under the Construction Contract and the Union or Contractor gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered under this Agreement and the Union and the Contractor agree that the expired Master Agreement shall 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 agrees to comply with any retroactive terms of the new or modified Master Agreement which are applicable to employees who were employed on the projects during the interim, with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement subject to section 4.3.

ARTICLE

6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

- 6.1 The assignment of Covered Work will be solely the responsibility of the Contractor 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.
- 6.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Contractors 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 Contractors and Unions parties to this Agreement.
- 6.3 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.

- 6.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

ARTICLE 7

JOINT LABOR/MANAGEMENT MEETINGS

- 7.1 Joint Labor/Management Meetings. During the period of any work performed under this Agreement, the Project Manager, or District designee, may schedule monthly Joint Labor/Management Meetings that include the Project Manager, or the District's designee, the Contractors and the Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the employees and the Contractors on the Project. These meetings may include a discussion of safety, craft resource requirements, scheduling and productivity of work performed at the Project. The Union representative shall keep minutes of any such meetings and the minutes shall be subject to approval at any subsequent meeting. Any such meetings may be in person or by conference call. It shall be mandatory for a representative of the Unions to participate in such meetings.
- 7.2 A Pre-Job Conference shall be scheduled by the District prior to the commencement of work to establish the scope of work in each Contractor's contract. When a contract has been let to a Contractor covered by this Agreement, a job conference and/or mark up meeting shall be scheduled by the District upon request of any Union, Contractor or the District.

ARTICLE 8

MANAGEMENT RIGHTS

- 8.1 The Contractor(s) retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:
- A. Plan, direct and control the operation of all the work.
 - B. Decide the number and types of employees required to perform the work safely and efficiently. The lawful staffing provisions of the applicable Master Agreement shall be recognized.

- C. Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.
 - D. Require all employees to observe the District and Contractor Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job meeting and supplied to all employees and/or posted on the jobsite.
 - E. Discharge, suspension or discipline will be handled under the applicable craft agreement.
 - F. Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work. However, individual craftspeople shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft's refusal to work overtime shall be subject to the grievance procedure.
 - G. Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designator (in accordance with Article 2).
 - H. The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.
- 8.2 All workers employed or otherwise used on a Project shall comply with the District's Drug and Alcohol-Free Workplace Policy (BP 4020) and Employee Drug Testing Policy (BP 4112.41, 4212.41, 4312.41) and applicable regulations as amended from time to time. If not otherwise specified, the drug testing protocol shall be in compliance with 49 Code of Federal Regulations (CFR) section 382.105 (Testing procedures) which incorporates 49 CFR Part 40.

ARTICLE 9

GRIEVANCE PROCEDURE

- 9.1 It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than matters subject to Section 5.5 and Union jurisdictional disputes subject to Article 6) shall be considered a grievance. Questions between or among parties signatory to a Master Agreement arising out of or involving the interpretation of a Master Agreement shall be resolved under the grievance procedure provided in that Master Agreement.
- 9.2 The District and other Contractors, as well as the Unions, may bring forth grievances under this Article.

9.3 A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term “working days” as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

9.4 Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by the District, and the Council and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, commence at Step 4:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor within five (5) working days after the Grievance has been brought to the attention of the Contractor.

Step 2

In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days thereafter, the alleged grievance may be referred in writing to the Business Manager(s) of the Union(s) affected and the site construction manager or Labor Relations representative of the Contractor(s) for discussion and resolution. A copy of the written grievance shall also be mailed, faxed or emailed to the District.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, within five (5) working days thereafter, the grievance may be referred in writing to the Business Manager(s) of the affected Union(s) involved and the Manager of Labor Relations of the Contractor(s) or the Manager’s designated representative and the District for discussion and resolution.

Step 4

If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to neutral arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the District. Should the parties be unable to mutually agree on the selection of a neutral Arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. District shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first.

9.5 The Arbitrator shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be

transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.

- 9.6 Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on the District. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement.
- 9.7 The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.
- 9.8 The Arbitrator's decision shall be confined to the issue(s) posed by the grievance, and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.
- 9.9 Any party to a grievance may invite the District to participate in resolution of a grievance. The District may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.
- 9.10 In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or faxed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or faxed during the extended time period.

ARTICLE 10

UNION SECURITY

- 10.1 The Contractors recognize the Unions signatory to this Agreement as the sole bargaining representative of all craft employees performing Covered Work for the Project.
- 10.2 All employees performing Covered Work shall, as a condition of employment on or before the eighth (8th) cumulative day of employment on the Project, be responsible for the payment of the applicable periodic working dues and any associated fees uniformly required for union membership in the local Union that is a signatory to this Agreement for the duration of his or her employment on the Project. Nothing in this Agreement is intended to prevent any non-union employees from joining the local Union.
- 10.3 Authorized representatives of the Unions shall have access to the Project whenever Covered Work is or will be performed on the Project. All authorized representatives

of the Union must comply with the required uniform check-in procedure prior to visiting the work area.

- 10.4 Each Union shall have the right to designate a working journeyman as a steward. The steward shall be a qualified employee performing the work of that craft and shall not exercise any supervisory functions. Each steward shall be concerned with the employees of the steward's Contractor and not with the employees of any other Contractor. A steward shall be allowed sufficient time to perform his duties.

ARTICLE 11

REFERRAL-LOCAL HIRE

- 11.1 Contractors performing Covered Work on the Project shall, in filling craft job vacancies, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory to this Agreement. Such Job Referral System shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and non-discrimination. The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement. The Unions shall be the primary source of all craft labor employed on the Project, however, an Contractor with a core workforce may request by name, and the local Union shall honor, referral of such Contractor's regular and experienced personnel ("Core Employees") who have applied to the applicable Union to perform Covered Work on the Project. For purposes of this Agreement, a Core Employee is a person who meets all of the following:
- (1) Possesses any license required by state or federal law for the Project work to be performed;
 - (2) Worked a total of at least one thousand (1,000) hours in the construction craft during the prior two (2) years;
 - (3) Has been on the Contractor's active payroll for at least ninety (90) out of the one hundred and twenty (120) calendar days prior to the contract award; and
 - (4) Has the ability to perform safely the basic functions of the applicable trade.
- 11.2 The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of the Contractor's Core Employees as a journeyman. The process will then be repeated, one for one, until such Contractor's crew requirements are met, or until such Contractor has hired eight (8) Core Employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work on the

Project, the ratio shall be maintained. When such Contractor's workforce is reduced, employees shall be reduced in the same one for one ratio of Core Employees to hiring hall referrals as was applied in the initial hiring. Contractors that are signatory to a Master Agreement with Union(s) signatory hereto must comply with the hiring hall provisions contained in the applicable Master Agreement, and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s) as they apply to such Contractors.

- 11.3 In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Contractor within a forty-eight (48) hour period after such requisition is made by the Contractor (Saturdays, Sundays and holidays excepted), the Contractor may employ applicants from any source. Contractors shall immediately notify and provide the appropriate Union(s) with the name and address of such gate-hires, who shall be bound by the provisions of this Article.
- 11.4 It is in the interest of the parties to this Agreement to facilitate employment of District and Local Area residents, including parents, guardians or other care givers of students attending the District's schools, and to use resources in the Local Area in construction of a Project. The "Local Area" shall be defined as the area within the boundaries of the District, the City of Sacramento and Sacramento County. To the extent allowed by law, and consistent with the Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, residents of the Local Area shall be first referred for Project work, including journeymen and apprentices covered by this Agreement. It is the goal of the parties that not less than fifty (50) percent of all hours worked on the Project, on a craft by craft basis, be worked by residents of the Local Area (including fifty (50) percent of the total hours worked by any Core Employees). Contractors will be required to submit certified weekly payroll records to the District along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this Article. At a minimum, the monthly reports must include: 1) data on Local Area resident work hour utilization on the Project; and 2) documentation showing any requests made to the Union dispatchers for Local Area residents and the Union's response to the request. An annual report shall be submitted to the Board on the number of workers employed, or contracted for, within the Local Area.

ARTICLE 12

APPRENTICES

- 12.1 The parties recognize the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractors will employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

- 12.2. Apprentices may comprise up to thirty (30) percent of each craft's work force at any time, unless the state approved apprenticeship standards or regulations or the applicable Master Agreement establish a lower maximum percentage.
- 12.3 The parties agree to work with the Construction Technology Academy ("Academy") as set forth in Attachment B in order to carry out the training and employment objectives of this Agreement, including providing District students with the opportunities and skills necessary to enter post-secondary study and to pursue lifelong training within the broader context of the building trades industry, and to develop and reinforce academic course standards in order to maximize career opportunities and technical competency.

ARTICLE 13

NON-DISCRIMINATION

- 13.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, political affiliation, national origin, age, religion, Vietnam veteran or Vietnam Era status, disability as identified in the Americans with Disabilities Act, membership in a labor organization in hiring and dispatching workers for the Project, or any other basis recognized by law. The parties to this Agreement understand and agree that nothing in this Agreement shall supersede or take precedence over any District Board of Education policy or requirement including, but not limited to, the construction contract and general conditions for the Project.
- 13.2 All qualified (as determined by the District and applicable law) contractors and subcontractors may bid and be awarded work on a Project without regard to whether they are otherwise parties to collective bargaining agreements provided they comply with the provisions of this Agreement.

ARTICLE 14

HOURS OF WORK, SHIFTS AND HOLIDAYS

- 14.1 The standard work day shall be in accordance with the applicable Master Agreements. Common start times may be established by the Contractor during the standard work day established by the applicable Master Agreements. The standard work week shall be five (5) consecutive days of work commencing on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.
- 14.2 Common shifts may be established when considered necessary by the Contractor. The Contractor shall provide at least one week notice to the Council prior to any change in shift time. Any shifts established shall continue for the established work week.

- 14.3 Recognized holidays shall be in accordance with the applicable Master Agreements. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate, but in no case shall such overtime rate be more than double the straight time rate.

ARTICLE 15

GENERAL PROVISIONS

- 15.1 If any article or provision of this Agreement shall become invalid, inoperative and/or unenforceable by operation of law or by declaration of any competent authority of the executive, legislative, judicial or administrative branches of the federal or state government, the District, the Contractors and the Council shall suspend the operation of such article or provision during the period of its invalidity, and the District and the Council shall negotiate in its place and stead an article or provision that will satisfy the objections to its validity and that, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question. The new article or provision negotiated by the District and the Council shall be binding on all parties signatory to this Agreement.
- 15.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.
- 15.3 Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreement of the Union having traditional and customary jurisdiction over the Covered Work shall apply.
- 15.4 The provisions of this Agreement shall take precedence over conflicting provisions of any Master Agreement or any other national, area or local collective bargaining agreement, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement and the National Cooling Tower Agreement. In addition, all instrument calibration work and loop checking Covered Work shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and work within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreements of the International Union of Elevator Constructors. Notwithstanding the provisions of this section, Articles 5, 6 and 9 of this Agreement shall apply to all Covered Work.
- 15.4 Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.

- 15.5 This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any signature pages may be assembled to form a single original document.
- 15.6 To the fullest extent consistent with the applicable Master Agreement and trust agreement, it is agreed that any liability under this Agreement by District, the Council, a Union, or any other Contractor shall be several and not joint. Any alleged breach of this Agreement by a party shall not affect the rights, liabilities, obligations, and duties among the other parties or between that party and any other party.

ARTICLE 16 HELMETS

TO HARDHATS

- 16.1 The Contractors and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, 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.
- 16.2 The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Contractors and Unions will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

ARTICLE 17

DURATION OF AGREEMENT; MID-TERM ASSESSMENT

- 17.1 This Agreement shall remain in full force and effect for a period of four (4) years from the date approved by the Board of Education on November 16, 2017. Notwithstanding the term of the Agreement as set forth above, the Agreement will continue to apply until the completion of all Covered Work pursuant to Section 2.1 where the initial bid for any Construction Contract for a Project is

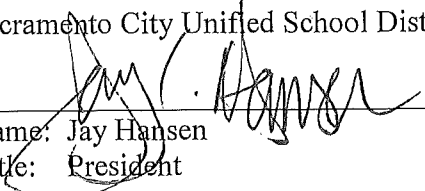
awarded or approved by the Board on or before the date the Agreement terminates.

- 17.2 At the two year mark, a mid-term assessment, including mutually agreed upon metrics, shall be reported to the Board.

[INTENTIONALLY LEFT BLANK]

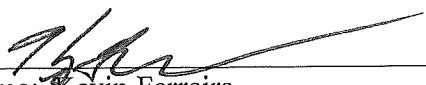
SIGNATURES

Sacramento City Unified School District


Name: Jay Hansen
Title: President

Date: December 16, 2017

Sacramento-Sierra Building and
Construction Trades Council


Name: Kevin Ferreira
Title: President

Date: 11/16/2017

UNIONS

UNIONS

Signed
Asbestos Workers Local #16

Signed
Iron Workers Local #118

Signed
Bricklayers Local #3

Signed
Laborers Local #185

Signed
Boilermakers Local #549

Signed
Operating Engineers Local #3

Signed
Cement Masons Local #400

Signed
Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

Signed
UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

Signed
District Council #16 International
Union of Painters & Allied Trades

Signed
Plumbers & Pipefitters Local #447

Signed
Elevator Constructors Local #8

Signed
Roofers Local #81

Signed
International Brotherhood of Electricians
Local #340

Signed
Sheet Metal Workers Local #104

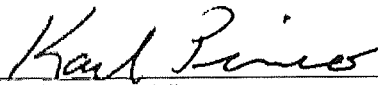
Signed
Sprinkler Fitters Local #669


Signed
Teamsters Local #150

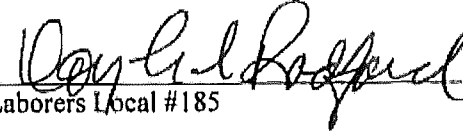
Signed
Asbestos, Lead and Mold Laborers
Local #67


Asbestos Workers Local #16

UNIONS


Iron Workers Local #118


Bricklayers Local #3


Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

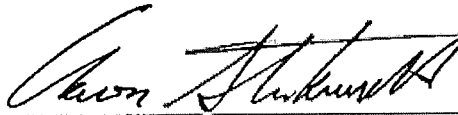
Cement Masons Local #400

Plasterers & Cement Masons Local #300

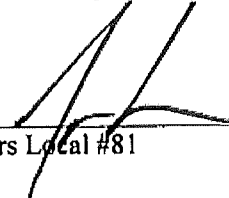
Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

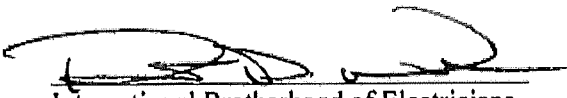
UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades


Plumbers & Pipefitters Local #447

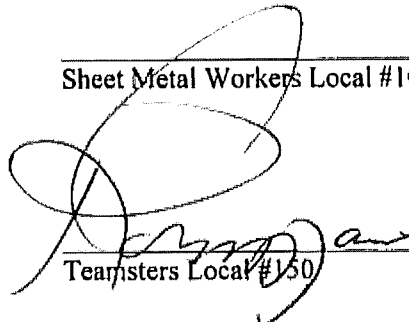
Elevator Constructors Local #8


Roofers Local #81


International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669


Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185


Boilermakers Local #349

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

**Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions**

**UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355**

**District Council #16 International
Union of Painters & Allied Trades**

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

**International Brotherhood of Electricians
Local #340**

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

**Asbestos, Lead and Mold Laborers
Local #67**

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cody J. Bit
Cement Masons Local #400

Plasterers & Cement Masons Local #300

**Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions**

**UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355**

**District Council #16 International
Union of Painters & Allied Trades**

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

**International Brotherhood of Electricians
Local #340**

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

**Asbestos, Lead and Mold Laborers
Local #67**

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

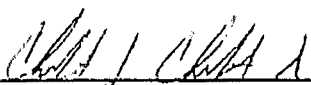
Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355


District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

**Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions**

**UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355**

**District Council #16 International
Union of Painters & Allied Trades**

Plumbers & Pipefitters Local #447


Elevator Constructors Local #8

Roofers Local #81

**International Brotherhood of Electricians
Local #340**

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

**Asbestos, Lead and Mold Laborers
Local #67**

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional
Council on behalf of itself and its affiliated
Local Unions

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

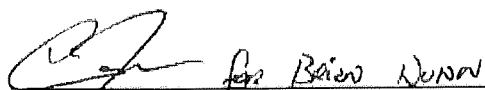
Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104


Sprinkler Fitters Local #669

Teamsters Local #150

Done SMUD PCC with NABTU Letter... 

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

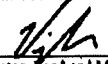
Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150


Asbestos, Lead and Mold Laborers
Local #67



UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549


Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

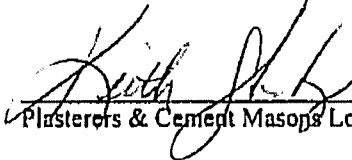
Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400


Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions


UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Asbestos, Lead and Mold Laborers
Local #67

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

Asbestos, Lead and Mold Laborers
Local #67

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

District Council #16 International
Union of Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8


Roofers Local #81
& WATERPROOFERS

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

Northern California Carpenters Regional
Council on behalf of itself and its affiliated
Local Unions

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Bricklayers Local #3

Laborers Local #185

Boilermakers Local #549

Operating Engineers Local #3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

**Northern California Carpenters Regional Council
on behalf of itself and its affiliated Local Unions**

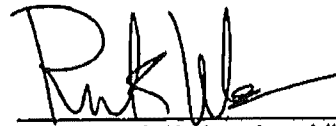
**UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355**

**District Council #16 International
Union of Painters & Allied Trades**

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81



**International Brotherhood of Electricians
Local #340**

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

**Asbestos, Lead and Mold Laborers
Local #67**

ATTACHMENT A

PROJECT LABOR AGREEMENT

Project: _____
Bid Number _____

AGREEMENT TO BE BOUND

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

The undersigned hereby certifies and agrees that:

- 1.) It is a Contractor as that term is defined in Section 1.7 of the Sacramento City Unified School District Agreement (“Agreement”) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work (as defined in Section 2.3) on the Project (as defined in Section 1.9), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5.) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Contractor(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work, and it will provide a copy of such executed Agreement to be Bound to the Sacramento-Sierra

Building & Construction Trades Council within fifteen (15) days of such contracting or subcontracting in accordance with Section 3.2 of the Agreement.

DATED: _____ Name of Contractor _____

(Authorized Officer & Title)

(Address)

ATTACHMENT B

PROJECT LABOR AGREEMENT

Project: _____
Bid Number _____

Construction Technology Academy. The parties have agreed to work with the Construction Technology Academy ("Academy") operated at the Sacramento City Unified School District's comprehensive high schools to carry out the training and employment objectives of this Attachment B. The overall objectives are to:

- (a) offer opportunities and skills necessary to enter post-secondary study and to pursue lifelong learning within the broader context of the building trades industry and construction management industry; and
- (b) develop and reinforce academic course contents standards in order to maximize career opportunities and technical competency.

Academy Steering Committee. In order to facilitate the goals of the Academy, the District and Council agree to create a steering committee ("Committee") which will conduct meetings as determined by the District during the school year to develop the goals of the Academy; plan for the presentation and content of training lectures to facilitate employable skills in the construction trades; develop a summer schedule for training; organize and develop summer internship positions; assist in planning curriculum scope and sequencing; design co-curricular activities; identify sources for educational and financial support; and otherwise initiate steps to carry out the goals of the Academy.

The committee shall consist of eight (8) members, with three (3) of the members representing building trades JATCs, two (2) members representing the Sacramento-Sierra Building and Construction Trades Council ("Council") and three (3) members representing the District. The Academy Steering Committee, in coordination with the District's Career Services representative, shall develop and implement a plan for annual assessment of the goals and objectives of Attachment B in order to maximize the employability of the summer interns described below. A quorum for the Committee meeting shall be at least one member representing the building trades JATCs; one member representing the Council; and one member representing the District.

- (1) **Annual Training Summer Sessions.** Annual summer intern training sessions developed by the Academy Steering Committee shall be made available for qualified District students nominated by the District and accepted by the Academy Steering Committee.
 - (a) **Purpose of Summer Training Sessions.** The purpose of the summer intern training sessions is to teach the interns employable skills in the construction trades and soft job skills applicable to any job setting. The skills sets to be taught will be determined by the Academy Steering

Committee. Examples of such are work site safety, proper use of construction tools, general employability skills and drug and alcohol information. The sessions shall include classroom and job visit components.

- (b) **Number of Interns.** The goal for the summer programs for the term of the Agreement shall be a maximum of twenty (20) internships available for students nominated by the District and approved by the Academy Steering Committee. The actual number of interns shall be determined and selected by the District.
 - (c) **Number and Scope of Training Sessions.** For the first year, the number of summer training sessions shall not be less than eight (8) with each session lasting a minimum of four (4) hours. The scope of the training sessions, and the presenters, shall be developed by the Academy Steering Committee. The location of the summer training centers will be at a JATC and the JATC's will provide presenters. Attendances at the training sessions are mandatory in order to be eligible for a summer internship.
 - (d) **Cost.** The District shall incur the costs of the interns. After the first year, a report shall be submitted to the Board of the costs incurred by the District and the costs incurred as provided by the Council, through the local Unions.
- (2) **Employment of Interns.** The interns shall be paid an hourly rate as required by law, but not for periods of time attending the classroom training sessions. The training sessions shall occur over a minimum of four (4) and maximum of five (5) weeks. The number of interns each year shall be determined by the District pursuant to (1)(b) above. Due to safety, prevailing wage and state law restrictions, the interns shall not be employed directly on the public works projects that are the subject of the Project Labor Agreement and this Attachment B.
- (3) **Intern Program and Priority on California Apprenticeship Council Approved Program Apprenticeship Lists.**
- (a) **Post-graduate Training.** The Academy Steering Committee will collaborate with post-graduate training programs, such as the Northern California Construction Training and American River College's Stripe Program, in order to assist graduates in obtaining an internship into a JATC.
 - (b) **Priority on Apprenticeship List.** The training and employment program of the interns shall be developed by the Academy Steering Committee such that graduating interns shall possess the skills, training, and educational background to help the graduate achieve priority on the lists of the building trades to the degree allowed under each JATC's application process

including those programs that allow direct entry. It is recognized that the Apprenticeship Programs operate according to existing Standards approved by the California Department of Industrial Relations, Division of Apprenticeship Standards, and the standards set forth in the collective bargaining agreements for each building trades union and that any such priority shall be in accordance with such Standards and agreements.

- (4) **District Staff Training.** The parties have also agreed that the Academy Steering Committee will explore opportunities to utilize the Academy's construction skills training program, including work site safety and proper use of construction tools, to enhance the skills of District maintenance and construction staff.
- (5) **Binding Effect.** This Attachment B shall be deemed incorporated into the Agreement as if set forth fully and at length in the Agreement and is binding in accordance with its terms. However, nothing in this Attachment B shall supersede the provisions of the Project Labor Agreement, a Master Agreement or the approved standards for any building trades' union apprenticeship program.

Exhibit H to Facilities Lease (Continued)
Amendment Extending Term of
Project Labor Agreement
for the
Sacramento City Unified School District

This Amendment ("Amendment") to the Project Labor Agreement for the Sacramento City Unified School District ("PLA") is entered into by and between the Sacramento City Unified School District ("District"), together with contractors and/or subcontractors who previously became signatory to the PLA and this Amendment by signing the "Agreement To Be Bound" (PLA Attachment A), and the Sacramento-Sierra Building & Construction Trades Council ("Council") and the local Unions that have executed this Amendment (collectively, the "Parties").

WHEREAS, the Parties entered into the PLA on or about November 16, 2017; and

WHEREAS, Section 17.1 of the PLA provides the term of the PLA shall be for a period of four (4) years from the date approved by the District's Board of Education on November 16, 2017; and

WHEREAS, the Parties desire to extend the term of the PLA for a period of six (6) months through and including May 16, 2022.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. The term of the PLA shall be extended to May 16, 2022.
2. This Amendment shall not alter or affect in any way any other portion of the PLA. All other terms of the PLA remain in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Amendment on the dates set forth below.

Sacramento City Unified School District

Name: Christina Pritchett
Title: President

Date: November __, 2021

Sacramento-Sierra Building and
Construction Trades Council

Name: Kevin Ferreira
Title: President

Date: _____

UNIONS

Asbestos Workers Local #16

Iron Workers Local #118

Asbestos, Lead and Mold Laborers
Local #67

Laborers Local #185

Boilermakers Local #549

Northern California Carpenters Regional
Council on behalf of itself and its affiliated
Local Unions

Bricklayers Local #3

Operating Engineers Local # 3

Cement Masons Local #400

Plasterers & Cement Masons Local #300

District Council #16 International Union of
Painters & Allied Trades

Plumbers & Pipefitters Local #447

Elevator Constructors Local #8

Roofers Local #81

International Brotherhood of Electricians
Local #340

Sheet Metal Workers Local #104

Sprinkler Fitters Local #669

Teamsters Local #150

UA of Journeymen & Apprentices of the
Plumbing & Pipe Fitting Ind. Local #355

EXHIBIT D

**GENERAL CONSTRUCTION PROVISIONS
FOR THE FOLLOWING**

**ALBERT EINSTEIN #0410-453, FERN BACON#0431-453, AND JOHN STILL MIDDLE SCHOOL #0445-453
REROOFING AND HVAC REPLACEMENT PROJECT**

BY AND BETWEEN

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

AND

SWINERTON BUILDERS

Dated as of May 26, 2022

DWK DMS 3804496v1

TABLE OF CONTENTS

	<u>Page</u>
1. CONTRACT TERMS AND DEFINITIONS	1
2. [RESERVED].....	11
3. ARCHITECT	11
4. CONSTRUCTION MANAGER	12
5. INSPECTOR, INSPECTIONS, AND TESTS.....	12
6. DEVELOPER.....	14
7. SUBCONTRACTORS	27
8. OTHER CONTRACTS/CONTRACTORS.....	28
9. DRAWINGS AND SPECIFICATIONS	28
10. DEVELOPER’S SUBMITTALS AND SCHEDULES	30
11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS	35
12. TRENCHES	38
13. INSURANCE AND BONDS	39
14. WARRANTY/GUARANTEE/INDEMNITY	40
15. TIME.....	41
16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES, EXCUSABLE DELAYS	43
17. CHANGES IN THE WORK	46
18. REQUESTS FOR INFORMATION	56
19. PAYMENTS	56
20. COMPLETION OF THE WORK	64
21. FINAL PAYMENT AND RETENTION	68
22. UNCOVERING OF WORK.....	69
23. NONCONFORMING WORK AND CORRECTION OF WORK	70
24. TERMINATION AND SUSPENSION	71
25. CLAIMS PROCESS.....	71
26. STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS	79
27. [RESERVED].....	86
28. MISCELLANEOUS.....	86

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 District’s Project Management System 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-G

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 COVID-19 Vaccination/Testing Certification

1.1.15.4.10 Drug-Free Workplace Certification

- 1.1.15.4.11** Tobacco-Free Environment Certification
- 1.1.15.4.12** Disabled Veterans Business Enterprise Participation Certification (if applicable)
- 1.1.15.4.13** Roofing Project Certification (if applicable)
- 1.1.15.4.14** Hazardous Materials Procedures and Requirements
- 1.1.15.4.15** Hazardous Materials Certification (if applicable)
- 1.1.15.4.16** Lead-Based Materials Certification (if applicable)
- 1.1.15.4.17** Imported Materials Certification (if applicable)
- 1.1.15.4.18** Skilled and Trained Workforce Certification
- 1.1.15.4.19** Project Labor Agreement (if applicable)
- 1.1.15.4.20** Registered Subcontractors List
- 1.1.15.4.21** Escrow Agreement for Security Deposits in Lieu of Retention (if used)
- 1.1.15.4.22** Guarantee Form
- 1.1.15.4.23** 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.

1.7.1 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.

1.7.1.1 If the material, process, or article offered by Developer is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Developer shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.

1.7.1.2 This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(c); therefore, Developer shall not be entitled to request a substitution with respect to those materials, products or services.

1.7.2 A request for a substitution shall be submitted as follows:

1.7.2.1 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.

1.7.2.2 Requests for Substitutions after award of the Contract shall be submitted within thirty-five (25) days of the date of the Notice to Proceed with Construction.

1.7.3 Within (25) 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:

1.7.3.1 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;

1.7.3.2 Available maintenance, repair or replacement services;

1.7.3.3 Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

1.7.3.4 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

1.7.3.5 The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

1.7.4 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. Developer warrants that if substitutes are approved:

1.7.4.1 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;

1.7.4.2 Developer provides the same warranties and guarantees for the substitute that would be provided for that specified;

1.7.4.3 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 Developer without a change in the Contract Price or Contract Time;

1.7.4.4 Developer shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and

1.7.4.5 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, Developer agrees to execute a deductive Change Order to reflect that credit.

1.7.5 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.

1.7.6 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.

1.7.7 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 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.

1.8 Materials and Work

1.8.1 Except as otherwise specifically stated in the Contract Documents, Developer shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Work, in a good and workmanlike manner, within the Contract Time.

1.8.2 Unless otherwise specified, all materials shall be new and of the best quality of their respective kinds and grades as noted or specified, and workmanship shall be of high quality, and Developer shall use all diligence to inform itself fully as to the required manufacturer's instructions and to comply therewith.

1.8.3 Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected from the elements, theft, vandalism, or other loss or damage as required.

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

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

1.8.6 In the event of Developer's neglect in complying or failure to comply with the above instructions, District reserves the right, but has no obligation, to place orders for such materials and/or equipment as the District may deem

advisable so that the Work may be completed by the date specified in the Facilities Lease, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Developer or deducted from payment(s) to Developer.

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

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

1.8.9 Title to new materials and/or equipment for the Work of the Contract Documents and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of the Contract Documents and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract Documents. Should the District, in its discretion, allow Developer to store materials and/or equipment for the Work off-site, Developer will store said materials and/or equipment at a bonded warehouse and with appropriate insurance coverage at no cost to District. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

1.8.10 [Reserved]

2. [Reserved]

3. Architect

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

necessary, in Architect's reasonable opinion, to ensure the proper execution of the Contract Documents.

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

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

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

4. Construction Manager

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

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

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

5. Inspector, Inspections, and Tests

5.1 Project Inspector

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

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

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

5.2 Tests and Inspections

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

5.2.2 The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by Developer. Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection. This notice shall be provided, at a minimum, forty-eight (48) hours prior to the inspection of the material that needs to be tested and, at a minimum, seventy-two (72) hours prior to any special or off-site inspection.

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

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

5.2.5 The District will select the testing laboratory and pay for the costs for all tests and inspections, except those inspections performed at Developer's request and expense. Developer shall reimburse the District for any and all

laboratory costs or other testing costs for any materials found to be not in compliance with the Contract Documents. At the District's discretion, District may elect to deduct laboratory or other testing costs for noncompliant materials from the Guaranteed Maximum Price, and such deduction shall not constitute a withholding.

5.3 Costs for After Hours and/or Off Site Inspections

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

6. Developer

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

6.1 Status of Developer

6.1.1 Developer 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 an agreed upon District Project Management System at no cost 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 Cal/OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

12.5 Discovery of Hazardous Waste and/or Unusual Conditions

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

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

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

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

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

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

13. Insurance and Bonds

13.1 Developer's Insurance

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

13.2 Contract Security – Bonds

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

13.2.1.1 Performance Bond

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

13.2.1.2 Payment Bond

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

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

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

14. Warranty/Guarantee/Indemnity

14.1 Warranty/Guarantee

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

14.1.2 In addition to guarantees and warranties required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of TWO (2) years after the later of the following dates, unless a longer period is provided for in the Contract Documents:

14.1.2.1 The acceptance by the District's governing board of the Work, subject to these General Conditions, or

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

14.1.3 If any work is not in compliance with the Drawings and Specifications, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a TWO (2) 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

15.2.2 The number of days of Adverse Weather exceeds the following parameters:

January	7	July	0
February	6	August	0
March	7	September	0
April	4	October	2
May	2	November	5
June	0	December	7

15.2.3 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.

15.2.4 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.

15.2.5 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 overhead 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 via the Construction Manager 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 via the Construction Manager 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 to the Construction Manager 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 As Developer and its subcontractors have agreed to be bound by the terms of the PLA entered into by the District dated November 16, 2017, Developer and its subcontractors may be excused from uploading CPRs 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 at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>, or by using a more current application and URL. However, within ten (10) days of any request by the District or Labor Commissioner,

Developer and its subcontractors shall provide CPRs showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Developer and/or each subcontractor in connection with the Work.

26.5 [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)

1. COVID-19 Vaccination and Testing Requirements

Developer shall comply with all applicable federal, state and local laws regarding COVID-19. On August 11, 2021, the California Department of Public Health (“CDPH”) issued a new State Public Health Officer Order (“Order”) regarding COVID-19 vaccine verification for workers in school districts, affecting District operations. The Order took effect on August 12, 2021, and all affected worksites must be in full compliance with the Order by October 15, 2021. In addition, the District passed Resolution No. 3233 which requires all District contractors who work directly with students or District staff at District facilities after January 31, 2022 to be fully vaccinated or have submitted a valid exemption to Developer. Accordingly, Developer is required to comply with the following before permitting Developer personnel to work at the Project site:

Vaccination Requirements

Developer shall fill out, sign, date and submit to District the COVID-19 Vaccination/Testing Certification Form. The completed COVID-19 Vaccination/Testing Certification Form must be received by the District prior to the Notice to Proceed.

According to the August 11, 2021, California Department of Public Health (“CDPH”) State Public Health Officer Order (“Order”), a person is “fully vaccinated” for COVID-19 if two weeks or more have passed since they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more have passed since they received a single-dose vaccine (Johnson and Johnson[J&J]/Janssen).

Pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards, Developer shall only accept the following as proof of vaccination:

- (a) COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card) which includes name of person vaccinated, type of vaccine provided and date last dose administered);
- (b) a photo of a Vaccination Record Card as a separate document;
- (c) a photo of a Vaccination Record Card stored on a phone or electronic device;
- (d) documentation of COVID-19 vaccination from a health care provider;
- (e) digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader name, date of birth, vaccine dates and vaccine type; or
- (f) documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

In the absence of knowledge to the contrary, Developer may accept the documentation presented in (a) through (f) above as valid.

Developer shall have a plan in place for tracking verified Developer personnel vaccination status. Records of vaccination verification must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

Developer personnel, including any and all tiers of subcontractor, supplier, and any other personnel entering the Project site, who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

Weekly Testing Requirements

Developer shall ensure that Developer personnel, including any and all tiers of subcontractor, supplier, and any other worker entering the Project site, who have submitted a valid exemption to vaccination are required to undergo diagnostic screening testing, as specified below:

(a) Developer personnel may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

(b) Unvaccinated or not fully vaccinated Developer personnel must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, do not waive this requirement for testing.

Developer shall have a plan in place for tracking test results and conducting workplace contact tracing, and must report results to local public health departments, if applicable.

2. COVID-19 Safety and Social Distancing Requirements

Developer shall, at its cost, timely comply with all applicable federal, State, and local requirements relating to COVID-19 including, without limitation, preparing, posting, and implementing a Social Distancing Protocol, as required. In addition, Developer's Safety Plan, required under the General Conditions, must include an Appendix labeled "COVID-19 SAFETY PLAN," which must detail Developer's safety and compliance plan for COVID-19, specifically adapted from the Project, including, without limitation, the following: signage, measures to protect employee health, measures to prevent crowds from gathering, measures to keep people at least six feet apart, measures to prevent unnecessary contact, and measures to increase sanitization.

3. Mitigation Measures

Not Used

4. **Permits, Certificates, Licenses, Fees, Approvals**

4.1. **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:

Water Connection Fees, Sewer Connection Fees, Impact Fees, Capacity Charges.

With respect to the above listed items, Developer shall be responsible for securing such items; however, 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 to DSA.

5. **Disabled Veterans Business Enterprise**

Not Used

6. **Modernization Projects**

6.1. **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.

6.2. **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.

6.3. 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.

6.4. 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.

6.5. 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.

6.6. 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.

6.7. 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.

7. Construction Manager

Vanir Construction Management is the Construction Manager described in Section 4 to Exhibit D to the Facilities Lease, the General Construction Provisions.

8. Designation of Certain Products as the Only Acceptable Materials, Products, or Things for the Project

Not Used

9. Not Used

10. Not Used

11. Not Used

12. Not Used

13. Not Used

14. As-Builts and Record Drawings

14.1 When called for by Division 1, Developer shall submit As-Built Drawings pursuant to the Contract Documents consisting of one set of computer-aided design and drafting ("CADD") files in the following format Auto CADD and PDF, plus one set of As-Built Drawings as hard copy.

14.2 Developer shall submit Record Drawings pursuant to the Contract Documents consisting of one set of computer-aided design and drafting ("CADD") files in the following format Auto CADD and PDF, plus one set of Record Drawings as hard copy

SITE LEASE

RFQ/P #0445-453, 0410-453 & 0431-453

For all or a portion of the following Site:

Albert Einstein MS Reroofing and HVAC Replacement Project

Recorded Address: **9325 Mirandy Dr. Sacramento, CA 95826**

Physical Address: **9325 Mirandy Dr. Sacramento, CA 95826**

APN: **060-0420-003-0000**

Fern Bacon MS Reroofing and HVAC Replacement Project

Recorded Address: **4140 Cuny Ave. Sacramento, CA 95823**

Physical Address: **4140 Cuny Ave. Sacramento, CA 95823**

APN: **039-0100-002-0000**

John Still MS Reroofing and HVAC Replacement Project

Recorded Address: **2250 John Still Dr. Sacramento, CA 95832**

Physical Address: **2250 John Still Dr. Sacramento, CA 95832**

APN: **052-0300-002-0000**

By and between

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

And

Swinerton Builders
15 Business Park Way, Suite 101
Sacramento, CA 95828
Dated as of May 26, 2022

SITE LEASE
RFQ/P #0445-453, 0410-453 & 0431-453

This site lease ("Site Lease") dated as of May 26, 2022 ("Effective Date"), is made and entered into by and between the Sacramento City Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and Swinerton Builders ("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 9325 Mirandy Dr., Sacramento, CA 95826, known as Albert Einstein Middle School, 4140 Cuny Ave., Sacramento, CA 95823, known as Fern Bacon MS, 2250 John Still Dr., Sacramento, CA 95832, known as John Still MS, 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 Albert Einstein, Fern Bacon, John Still Middle School Reroofing and HVAC Replacement 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:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Attn: [Name, Title]

With a copy to:

Deidree Sakai, Esq.
Dannis Woliver Kelley
200 California Street, Suite 400
San Francisco, CA 94111

If to Developer:

Swinerton Builders
15 Business Park Way, Suite 101, Sacramento, CA 95828
Attn: Jeff Good, Vice President | Division Manager

With a copy to:

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

22. Binding Effect

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

23. No Additional Waiver Implied by One Waiver

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

24. Severability

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

25. Amendments, Changes and Modifications

Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties 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: May 26, 2022

Sacramento City Unified School District

Swinerton Builders

By: _____

By:  _____

Name: _____

Name: Jeff Good

Title: _____

Title: VP | Division Manager

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

Fern Bacon MS Reroofing and HVAC Replacement Project RFQ/P#0431-453
Recorded Address: 4140 Cuny Ave. Sacramento, CA 95823
Physical Address: 4140 Cuny Ave. Sacramento, CA 95823 APN:
039-0100-002-0000



MBT/JK

Project No: RQ MFY 222229

Parcel No: 42-170-01

COUNTY OF SACRAMENTO
DEPARTMENT OF PUBLIC WORKS
REAL ESTATE DIVISION

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 197____, by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as the "First Party" and _____ SACRAMENTO CITY UNIFIED SCHOOL DISTRICT OF SACRAMENTO, a political subdivision of the State of California hereinafter referred to as the "Second Party _____".

WITNESSETH:

WHEREAS a _____ Right of Way Deed _____ has been executed and delivered by Second Party _____ to First Party, covering the following described property:

All that portion of the Southwest one-quarter of Section 32, Township 8 North, Range 5 East, M.D.B. & M., described as follows:

BEGINNING at the point of intersection of the Easterly right of way line of Franklin Boulevard, a public road, and the North property line of Parcel 1 as said parcel is so designated on that certain Grant Deed recorded in the office of the Recorder of Sacramento in Book 3141 of Official Records, Page 628, from which the Southwest corner of Section 32 bears the following three (3) courses and distances: (1) North 89° 50' 40" West 54.29 feet; (2) South 22° 46' 35" East 2788.05 feet; and (3) South 89° 50' 20" West 1482.93 feet; thence from said point of beginning along said Easterly right of way line South 22° 46' 35" East 11.81 feet; thence North 67° 13' 25" East 9.00 feet; thence North 22° 46' 35" West 8.00 feet to a point on said North property line; thence along said North property line North 89° 50' 40" West 9.77 feet to the point of beginning, containing 0.002 acres, more or less.

Attached is the Legal Description for:

Albert Einstein MS Reroofing and HVAC Replacement
Project RFQ/P#0410-453

Recorded Address: 9325 Mirandy Dr. Sacramento, CA
95826

Physical Address: 9325 Mirandy Dr. Sacramento, CA 95826

APN: 060-0420-003-0000

DESCRIPTION

All that real property situate in the County of Sacramento,
State of California, described as follows:

All that portion of the Northwest one-quarter of Section 17,
Township 8 North, Range 6 East, Mount Diablo Meridian, shown
as "Sacramento City Unified School District" upon that certain
Record of Survey Filed in the office of the Recorder of Sacramento
County, California in Book 21 of Surveys, at Page 20, and being
particularly described as follows:

BEGINNING at a point in said Section 17 from which point of
beginning the southwest corner of the northwest one-quarter
of said Section 17 bears the following two courses:
(1) South 00°07'56" East 300.09 feet to a point on the centerline
of Kiefer Boulevard (formerly Middle Jackson Road) and on the
south line of the northwest one-quarter of said Section 17, and
thence (2), along the centerline of said Kiefer Boulevard and
along the south line of the northwest one-quarter of said Section 17,
South 89°37'00" West 16.50 feet distant; thence, FROM SAID POINT
OF BEGINNING, parallel with the west line of said Section 17,
North 00°07'56" West 740.02 feet; thence, the following ten (10)
courses:

1. North 89°33'10" East 318.50 feet; thence,
2. curving to the left on the arc of a tangent curve having a
radius of 785.00 feet, said arc being subtended by a chord
bearing North 67°37'35" East 586.26 feet to a point; thence,
on the southeasterly prolongation of a radial line of said
curve through said point,
3. South 44°18'00" East 624.00 feet; thence,
4. curving to the right on the arc of a tangent curve having
a radius of 415.00 feet, said arc being subtended by a chord
bearing South 22°22'25" East 309.93 feet; thence,
5. tangent to the preceding curve, South 00°26'50" East 100.00
feet; thence,
6. from a tangent that bears South 89°33'10" West, curving to the
left on the arc of a curve having a radius of 685.00 feet, said
arc being subtended by a chord bearing South 85°34'35" West
95.00 feet; thence,
7. tangent to the preceding curve, South 81°36'00" West 370.00
feet; thence,
8. curving to the left on the arc of a tangent curve having a
radius of 1444.00 feet, said arc being subtended by a chord
bearing South 77°01'55" West 230.01 feet to a point of reverse
curve; thence,
9. from a tangent that bears South 72°27'50" West, curving to the
right on the arc of a tangent curve having a radius of 312.43
feet, said arc being subtended by a chord bearing
South 81°00'30" West 92.84 feet; thence,
10. tangent to the preceding curve, South 89°33'10" West 636.90
feet TO THE POINT OF BEGINNING, and containing 22.700 acres
of land, more or less.

SUBJECT TO EXISTING RIGHTS OF WAY AND EASEMENTS OF RECORD.

Prepared by:

Timothy S. Train
Timothy S. Train
Licensed Surveyor No. 2457

July 15, 1982



Attached is the Legal Description for:

John Still MS Reroofing and HVAC Replacement Project

RFQ/P #0445-453

Recorded Address: **2250 John Still Dr. Sacramento, CA 95832**

Physical Address: **2250 John Still Dr. Sacramento, CA 95832**

APN: **052-0300-002-0000**

Legal Description

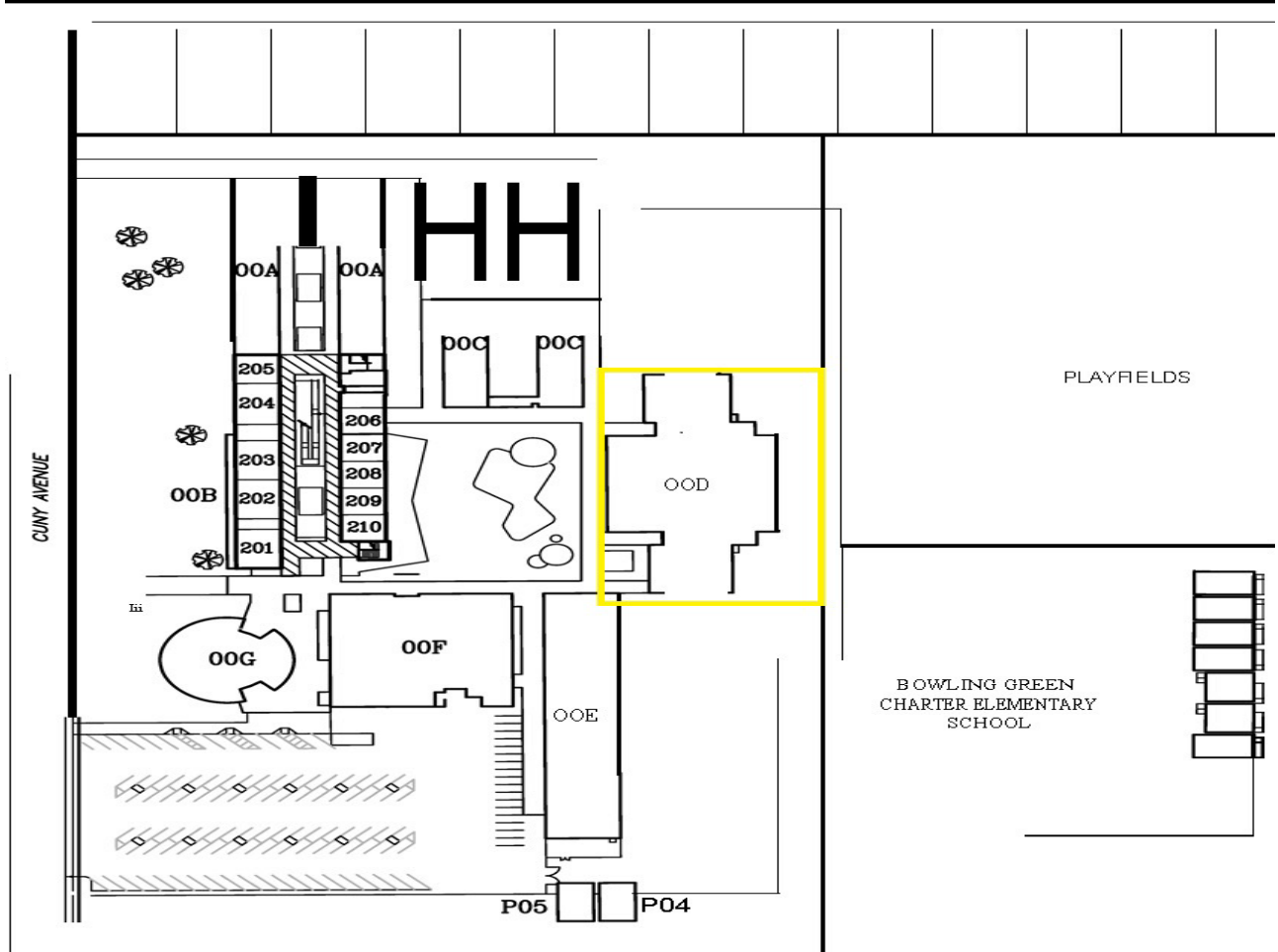
Parcel B, Parcel Map Book 52, Page 7

EXHIBIT B

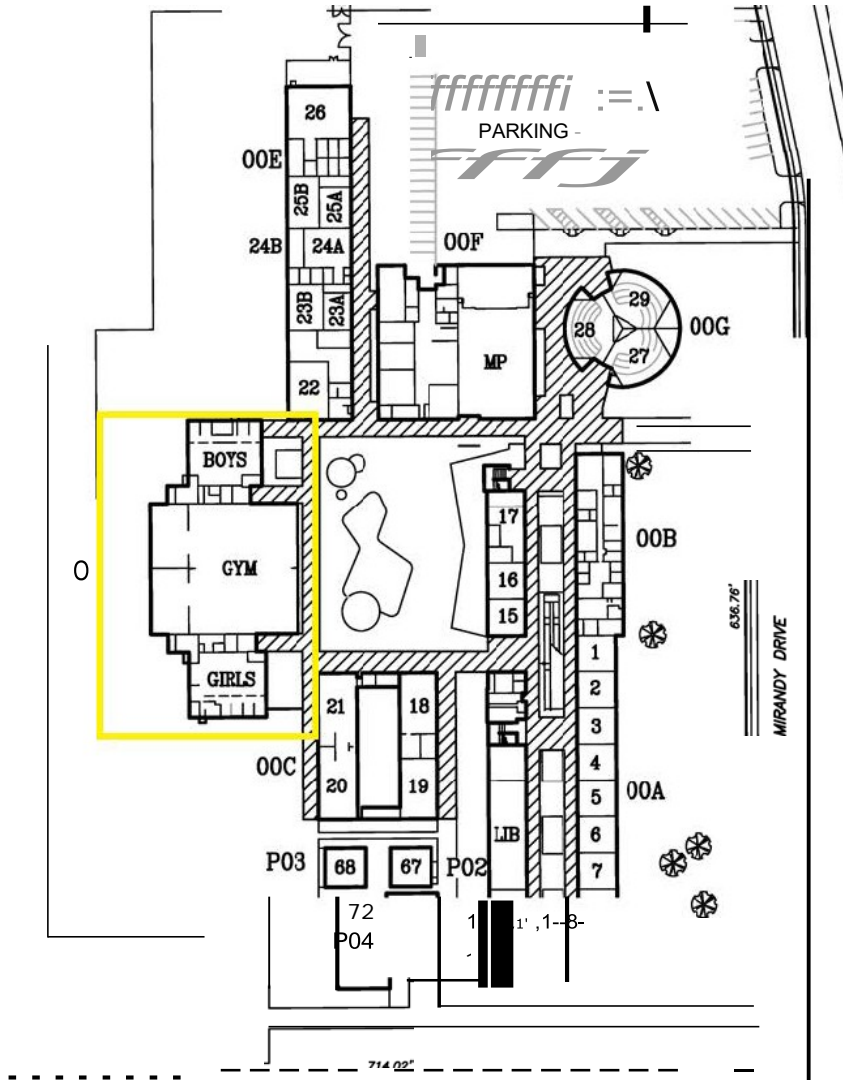
DESCRIPTION OF PROJECT

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 as shown in the highlighted areas.

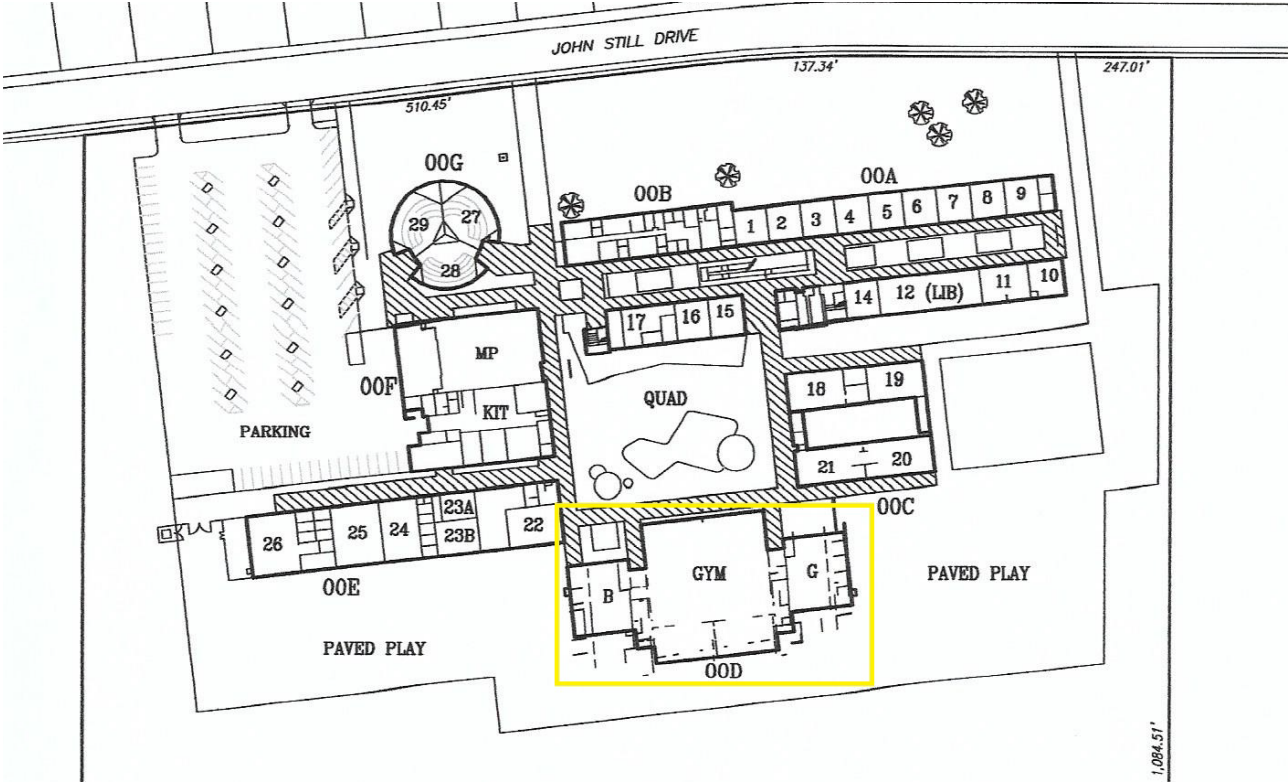
Fern Bacon MS RFQ/P#0431-453



Albert Einstein MS RFQ/P#0410-453



John Still MS RFQ/P#0445-453



SITE LEASE

For all or a portion of the following Site:

**Rosa Parks MS Reroofing and HVAC
Replacement Project**

Recorded Address: **2250 68th Ave. Sacramento, CA 95822**

Physical Address: **2250 68th Ave. Sacramento, CA 95822**

APN: **048-0011-001-0000**

Leonardo da Vinci MS Reroofing and HVAC Replacement Project

Recorded Address: **4701 Joaquin Way. Sacramento, CA 95822**

Physical Address: **4701 Joaquin Way. Sacramento, CA 95822**

APN: **018-0112-013-0000**

By and between

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

And

S+B James Construction
4312 Anthony Court, Ste. B
Rocklin, CA 95677

Dated as of May 26, 2022

SITE LEASE

This site lease ("Site Lease") dated as of May 26, 2022("Effective Date"), is made and entered into by and between the Sacramento City Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and S+B James Construction ("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 2250 68th Avenue, and 4701 Joaquin Way, Sacramento, CA 95822, known as Rosa Parks and Leonardo da Vinci Middle 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 Rosa Parks and Leonardo da Vinci MS HVAC Replacement 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:

Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Attn: Contracts Department

With a copy to:

Deidree Sakai, Esq.
Dannis Woliver Kelley
200 California Street, Suite 400
San Francisco, CA 94111

If to Developer:

S+B James Construction
1450 Halyard Drive Ste 11A
West Sacramento, CA 95691
Attn: Silas Nigam, President

With a copy to:

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

22. Binding Effect

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

23. No Additional Waiver Implied by One Waiver

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

24. Severability

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

25. Amendments, Changes and Modifications

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

Sacramento City Unified School District

S+B James Construction

By: _____

By: _____

Name: Rose F. Ramos

Name: _____

Title: Chief Business Officer

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

Rosa Parks HVAC Replacement Project

Recorded Address: **6749 Gloria Dr. Sacramento,**

CA 95831 Physical Address: **6715 Gloria Dr.**

Sacramento, CA 95831 APN: 048-0011-001-0000

ROSA PARKS # 0420-453

All that portion of the Northeast one-quarter of Section 1, Township 7 North, Range 4 East, M.D.B. & M., described as follows: Beginning at a point from which the Northeast corner of said Section 1, said corner being the intersection of the center line of Florin Road, with the center line of 24th Street Road, bears North 89° 46' 05" East 441.00 feet to a point on the East line of said Section 1; and thence along said East line North 00° 00' 50" West 2640.00 feet; thence from said point of beginning South 89° 46' 05" West 947.66 feet; thence North 00° 14' 11" West 589.02 feet; thence curving to the right on an arc of 20.00 feet radius, said arc being subtended by a chord bearing North 44° 46' East 28.28 feet; thence North 89° 46' East 907.66 feet; thence curving to the right on an arc of 20.00 feet radius, said arc being subtended by a chord bearing South 45° 14' East 28.28 feet; thence South 00° 14' East 589.05 feet to the point of beginning; containing 13*246 acres, more or less.

Leonardo da Vinci MS Reroofing and HVAC Replacement Project

Recorded Address: **4701 Joaquin Way. Sacramento, CA 95822**

Physical Address: **4701 Joaquin Way. Sacramento, CA 95822**

APN: **018-0112-013-0000**

Lots 23 & 24 & 25 Hollywood Park

EXHIBIT B

DESCRIPTION OF PROJECT

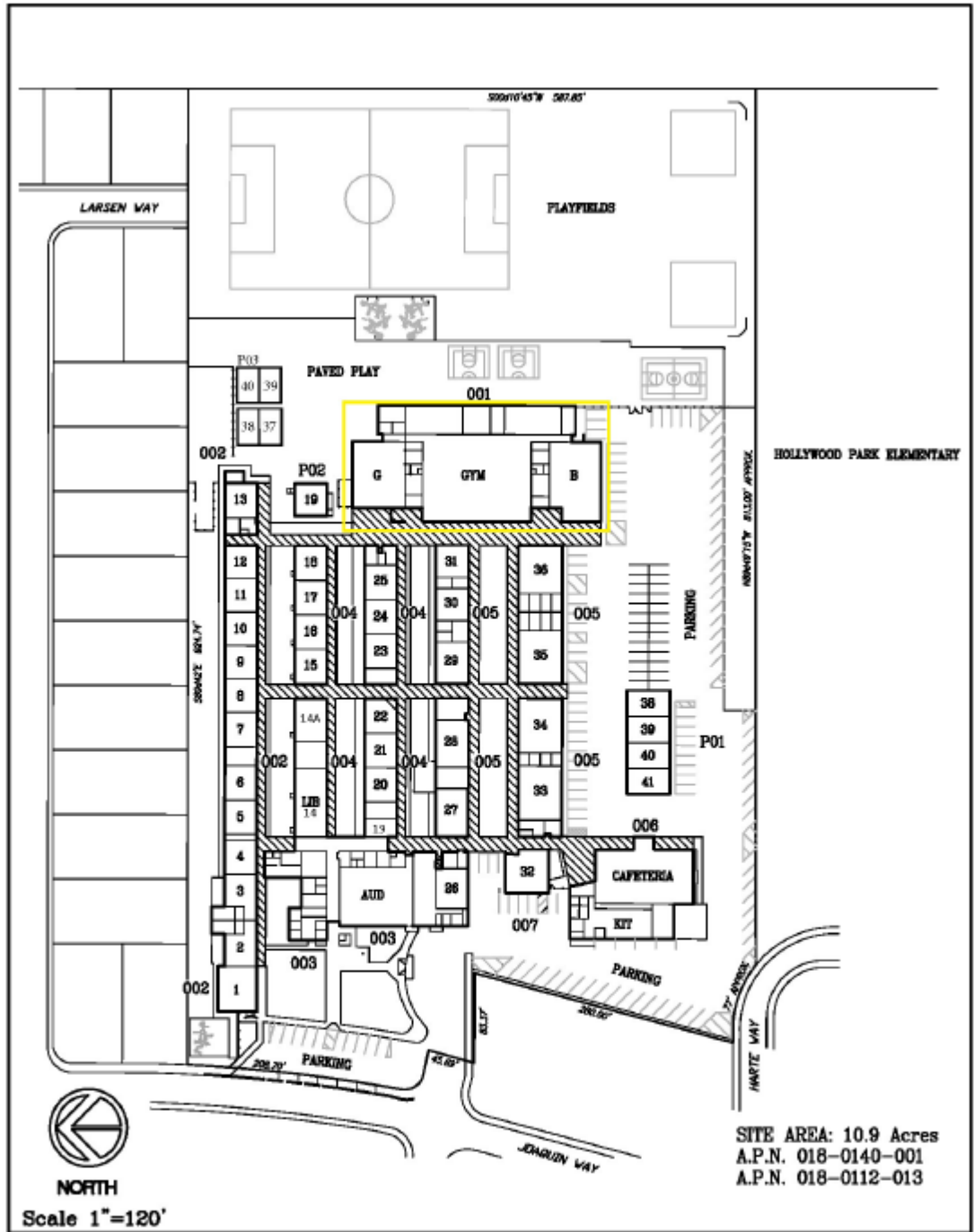
Attached is a map or diagram showing the location of the Site that is subject to this Site Lease and upon which Developer will construct the Project.

Rosa Parks:



Rosa Parks and LDV HVAC Replacement Project

Leonardo da Vinci:



Leonardo da Vinci K-8 School (151)
4701 Joaquin Way
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM
DECEMBER 2003

