FACILITIES LEASE

For all or a portion of the following Site:

Mt. Diablo High School
2450 Grant Street
Concord, CA 94520

By and between:

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

And

S & H Construction, Inc.
5560 Boscell Common
Fremont, CA 94538

Attention: Harmeet Anand

Dated as of December 24, 2012

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of December 24, 2012 ("Effective Date"), is made and entered into by and between **S & H Construction, Inc.** ("Developer"), a California company duly organized and existing under the laws of the State of California, as sublessor, and **Mt. Diablo 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, on the date hereof, the District has leased to Developer, a parcel of land known as Mt. Diablo High School, and as more particularly described in **Exhibit "A""** ("School Site") attached hereto and incorporated herein by reference, and on which is located an existing high school; and

WHEREAS, the District desires to provide for **interior renovation/IHTA and appurtenant facilities to be performed on portions of the School Site.** That work will include related work as further indicated in **Exhibit "B"** (the "Project");

WHEREAS, the District has determined that a portion of the School Site are adequate to accommodate the Project, as more particularly described in **Exhibit "B"** ("Project Site") attached hereto and incorporated herein by reference; and

WHEREAS, District has retained **P+Hd Architects** ("Architect") to prepare plans and specifications for the Project ("Plans and Specifications") which have been approved by the California Division of State Architect ("DSA"); and

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

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

WHEREAS, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site to Developer and to have Developer develop and construct the Project on the Project Site and to lease back to the District the Project Site and the Project, and has duly authorized the execution and delivery of this Facilities Lease; and

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

WHEREAS, the Board of Education of the District (the "Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Developer and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site and the Project from Developer and if necessary, make Lease Payments as indicated in **Exhibit "C"** attached hereto and incorporated herein by reference); and

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

WHEREAS, 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.

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 subsequent provisions defined herein, 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 S & H Construction, Inc., a California corporation, organized and existing under the laws of the State of California, and its successors and assigns.

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

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

1.4. "**District**" or "**Lessee**" means the Mt. Diablo 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 Board of Trustees 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 and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.6.2. The Project Site lease;

1.6.3. This Facilities Lease,

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

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

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

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

2.2. **Exhibit B - Legal Description of The Project Site and Description of the Project**: The description of the Project Site and the Project.

2.3. **Exhibit C - Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions:** A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Developer.

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

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

2.6. **Exhibit F – Construction Schedule**

2.7. **Exhibit G – Schedule of Values**

2.8. **Exhibit H – Agreement For Preliminary Services**

2.9. **Exhibit I – All Further Contract Documents**

3. **Lease of Project and Project Site.**

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

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

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

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

3.4. The Developer acknowledges that portions the Project Site shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a coordinated phasing plan and process whereby the Developer's activities shall be kept separate from the operating school even though the operating school is within the Project site.

3.5. **Work During Instructional Time.** Developer affirms that Work may be performed during ongoing instruction in existing facilities. If so, Developer agrees to cooperate to the best of its ability to minimize any disruption to the School Site up to, and including, rescheduling specific work activities, at no additional cost to the District.

3.6. **No Work During Student Testing**. Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the School Site are taking State-required tests. Refer to attached testing schedule (**Exhibit I**).

4. Term.

4.1. **Facilities Lease is Legally Binding.** This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The **Term** of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the earlier of the following two (2) events ("Commencement Date") and shall terminate six (6) months after the Commencement Date (the "Term"):

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

4.1.2. The date of Project Completion, as defined in **Exhibit "D"** to this Facilities Lease.

4.2. On the Commencement Date, the Parties shall execute the Memorandum of Commencement attached hereto as **Exhibit "E"** to memorialize the commencement and expiration dates 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 Term.

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 Project Cost and Other Project Cost, Funding, and Payment Provisions indicated in **Exhibit C** ("Guaranteed Project Cost Provisions").

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

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

5. **Payment**. In consideration for the lease of the Project Site by the Developer back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit "C."**

6. **Termination; Lease Terminable Only As Set Forth Herein.**

6.1. 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 all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated 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 Developer; 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 Guaranteed Project Cost 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.

6.2. 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.

6.3. Following Project Completion, that 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 Project Completion, 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.

6.4. District acknowledges that Developer may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost 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.

6.5. The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Developer. In case of a termination for convenience, the Developer shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise.

7. **Title.**

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

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

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

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

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

9. Representations of the District. The District represents, covenants and warrants to the Developer as follows:

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

9.2. 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.

9.3. No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site, except Permitted Encumbrances

9.4. CEQA Compliance. The District has complied with all 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. Developer shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.).

9.5. No Litigation. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

9.6. Condemnation Proceedings.

9.6.1. 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.

9.6.2. 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 Section 6.1 of this Facilities Lease.

10. Representations of the Developer. The Developer represents, covenants and warrants to the District as follows:

10.1. Due Organization and Existence. The Developer is a California corporation licensed to provide such services in the state of California, 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.

10.2. 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.

10.3. No Violations. Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Project Site, except Permitted Encumbrances.

10.4. No Bankruptcy. Developer is not now nor has it ever been in bankruptcy or receivership.

10.5. 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 Facilities Lease.

10.6. No Encumbrances. Developer shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site, and shall not mortgage or encumber the Project Site, except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Developer's financing the construction of the project.

10.7. 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:

10.7.1. Eighteen (18) months following Project Completion,

10.7.2. 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,

Developer shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Developer.

11. Construction Of Project

11.1. Project Site Conditions and Contract Documents. Developer acknowledges that it has and will perform certain special services in preparation to construct the Project.

11.2. Construction of Project.

11.2.1. 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 inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

11.2.2. **Contract Time / Construction Schedule.** It hereby understood and agreed that assuming the District issues a Notice to Proceed on or before December 24, 2012, District and Developer may also approve additional changes in the Construction Schedule. District shall have beneficial occupancy on or before April 23, 2013, and Project Completion shall on or before April 23, 2013. The time period between the Notice to Proceed and Completion shall be the total Contract time ("Contract Time"). The Construction shall be performed pursuant to the construction schedule, attached hereto as **Exhibit F** ("Construction Schedule"). The Construction Schedule must be approved by the District prior to execution of this Facilities Lease.

11.2.3. **Schedule of Values.** The Developer has provided a schedule of values, approved by the District, which attached hereto as **Exhibit G** ("Schedule of Values"). The Schedule of Values must be approved by the District prior to execution of this Facilities Lease.

11.2.4. **Liquidated Damages:** Time is of the essence for all work Developer must perform to obtain Project Completion. 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 Dollars ($1,000) per day as liquidated damages for each and every day's delay beyond the Contract Time.

11.2.4.1. It is hereby understood and agreed that the liquidated damages daily amount is not a penalty.

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

11.2.4.3. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Contract Time for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Facilities Lease

11.2.5. **Guaranteed Project Cost**. Developer will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Developer will not seek additional compensation from District in excess of that amount.

11.2.6. **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 will be handled as a Modification pursuant to the provisions of **Exhibit D.**

11.2.7. Developer shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.

12. Maintenance. Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all 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 and all other utilities of any type shall be paid by District.

14. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Developer or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Developer, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Developer, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Developer.

15. Insurance

15.1. Developer's Insurance. The Developer shall comply with the insurance requirements as indicated herein.

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Developer shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Developer, District, and the State, from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Project. Developer shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and Any auto including owned and non-owned, are included within the above policies and at the required limits, or Developer shall procure and maintain these coverages separately.

15.1.2. **Umbrella Liability Insurance**

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

15.1.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Developer, District, and the State, in amounts and including

the provisions and requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

15.1.3. **Subcontractor:** Developer shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits as appropriate and required by the Developer.

15.1.4. **Workers' Compensation and Employers' Liability Insurance**

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

15.1.4.2. Developer shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Developer shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Developer's insurance. If any class of employee or employees engaged in Work under 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. **Developer's Risk Insurance: Developer's Risk "All Risk" Insurance.** Developer shall procure and maintain, during the life of the Project, Developer's Builders 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, sonic disturbance, earthquake, flood, collapse, wind, fire, lightning, and smoke. 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. The deductible for this insurance shall be paid by Developer.

15.1.5.1 Waivers of Subrogation. The District and Developer waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) District's separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by either party. The District or Developer, as appropriate, shall require of the District's separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the

insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

15.1.6. **Professional Liability.** This insurance shall cover the Developer and his/her sub-consultant(s) for professional liability in at least the amounts set forth herein below. Additionally, 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, coverage to continue through Project Completion plus "tail" coverage for two (2) years thereafter.

15.1.7. **Proof 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 under the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District all insurance certificates indicating the required coverages have been obtained, and the District has approved these documents. If the District requests copies of Developer's insurance policies and/or endorsements from Developer, Developer shall provide them within fourteen (14) days.

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

15.1.7.2.1. A clause stating:

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

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

15.1.7.3. All endorsements, certificates and insurance policies shall state that District, its Board members, employees and agents, and the State of California, are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability Insurance, and Employers' Liability Insurance.

15.1.7.4. Developer's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

15.1.7.5. All endorsements, except for Professional Liability. shall waive any right to subrogation against any of the named additional insureds, except Architect.

15.1.7.6. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

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

15.1.8. **Insurance Policy Limits.** The limits of insurance shall not be less than the following amounts or as per the District's standard attached:

Commercial General Liability	Each Occurrence	$2,000,000
	General Aggregate Liability	$2,000,000
	Product Liability and Completed Operations	$1,000,000
Automobile Liability – Any Auto	Combined Single Limit	$2,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		$1,000,000
Developers Risk (Course of Construction)		Issued for the value and scope of Work indicated herein.
Excess Liability		$4,000.000
Professional Liability, If required by the District and either: - the premium is approved by the District, or - by each subconsultant and/or designer of documents produced by Developer.		$1,000,000 per occurrence and annual aggregate

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, carry and maintain in force for the benefit of District and Developer, as their interests may appear, 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 twelve (12) month period. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and such insurance may be maintained in whole or in part in the form of participation by the District in a joint powers agency or other program providing pooled insurance. This insurance may not be maintained in the form of self-insurance. The proceeds of this insurance shall be paid to the Developer in lieu of the Lease Payments that would otherwise be due and owing during this period.

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

15.2.3. **Commercial General Liability Insurance.** District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of commercial general liability insurance policy of $1,000,000. Developer shall be named as an additional insured or co-insured 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.

16.1. Developer's Indemnity Obligation. The Developer shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Developer or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Developer's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Developer shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Developer to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions, or liens by the California Department of Labor Standards Enforcement.

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

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

16.2. District's Indemnity Obligation. District shall indemnify, defend and hold harmless Developer and Developer's officers, directors, shareholders, partners, members, agents and employees from and against any claims, damages, costs, expenses, judgments or liabilities connected with this Facilities Lease, including, without limitation claims, damages, expenses, or liabilities for loss or damage to any property or for death or injury to any person or persons, only to the extent that those claims, damages, expenses, judgments or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees at the Project.

17. Eminent Domain.

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

17.1.1. The financial interest of Developer shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

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

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

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

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

17.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost 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 Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

18. Damage and Destruction. If, following delivery of possession 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 still no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Developer shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C.**

19. Abatement.

19.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E,** the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Developer have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost 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 Guaranteed Project Cost 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, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

19.3.3. Exercise the District's purchase option as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease.

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

20. Access

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

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

21. Assignment, Subleasing

21.1. Assignment and Subleasing by the District. Any assignment or sublease by District shall be subject to all of the following conditions:

21.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost 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; and

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 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. Events Of Default of District

22.1. 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" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

22.1.1. Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

22.1.2. 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 unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

22.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Developer may exercise any and all remedies available pursuant to law or 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 Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

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

22.2.1.1. An amount determined by a mutually-agreed upon appraiser, or

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

22.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

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

22.2.2.2. Decreased by the amount of rent Developer receives in reletting the Project Site.

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

22.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Developer is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Developer at the time and in the manner as therein provided.

22.4. 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 9, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

23. Events Of Default of Developer

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

23.1.1.1. Developer unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish Project Completion within the Contract Time or any extension thereof;

23.1.1.2. Prior to Project Completion, Developer is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;

23.1.1.3. Developer persistently disregards applicable law as indicated in **Exhibit "D,"** or otherwise be in violation of **Exhibit "D."**

23.1.2. Failure by the Developer 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 District provides Developer 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, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Developer within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on Developer's Default. If there has been an Event of Default on the Developer's part, the District may, without prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

23.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site and any improvements built upon the Project Site shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Developer's Default.

23.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,

23.2.2.1. The right to assess liquidated damages due as permitted herein;

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

24. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

24.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

24.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

24.3. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

24.4. 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

If to District:

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519
Attention: Superintendent

Telephone: (925) 682-8000

With a copy to:

Orbach Huff & Suarez
1 Kaiser Plaza, Ste. 1458
Oakland, CA 94612
Attention: Philip J. Henderson
Telephone: (510) 999-7908
Facsimile: (510) 999-7918

If to Developer:

S & H Construction, Inc.
5560 Boscell Common
Fremont, CA 94538
Attention: Harmeet Anand

Telephone: (510) 579-7382
Facsimile: (510) 659-8135

The Developer and the 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 the 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, 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 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 Guaranteed Project Cost Provisions indicated 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 but 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, such approval or such 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 School 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 such 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 Incorporated. The Recitals set forth at the beginning of this Facilities Lease 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 such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts , and such non performance will not be a default hereunder or a grounds for termination of this 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.

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: NOV 26, 2012
Mt. Diablo Unified School District	**S & H Construction, Inc.**
By: _____	By: _____
Print Name: _____	Print Name: Harmeet Anand
Print Title: Superintendent	Print Title: Chief Executive Officer

STATE OF CALIFORNIA)
) ss.
COUNTY OF Alameda)

On NOVEMBER 26, 2012 before me, the undersigned notary public, personally appeared

HARMEET ANAND, whose whole name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

JASMINE KAUR SINGH
COMM. # 1841515
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
COMM. EXPIRES MARCH 22, 2013

FACILITIES LEASE
EXHIBIT "A"

BUILDING DATA - FOR DSA ONLY

BUILDING NAME	BLDG. AREA	CONSTR. TYPE	OCCUPANCY
ADMINISTRATION BUILDING	4,835	V NR	B
LIBRARY	4,830	V NR	E-1
ENGLISH BUILDING	11,865	V NR	E-1
MUSIC BUILDING	5,700	V NR	E-1
SCIENCE BUILDING	17,690	V NR	E-1
HOMEMAKING BUILDING	9,893	V NR	E-1
MULTI-USE	10,400	V 1-HR	A-3
ACADEMIC BUILDING	17,598	II 1-HR	E-1
COMMERCIAL BUILDING	16,834	V 1-HR	E-1
WOOD SHOP BUILDING	13,430	V 1-HR	E-1
GYMASIUM	15,495	V-1	A2.1
SHOP BUILDING	7,290	V-N	E-1
SHOP BUILDING ADDITION	7,950	V-N	E-1
ART BUILDING	17,550	V 1-HR	E-1
ART BUILDING ADDITION	1,350	V-N	E-1
SOLAR CANOPY	–	II-B	A-3

SPRINKLER : NO

EXISTING ACCESS DATA - FOR DSA ONLY

1. (E) ACCESSIBLE PARKING LOTS W/ SIGNAGE (DSA APP.# 01-103304 (2001)).
2. (E) ACCESSIBLE DRINKING FOUNTAIN W/SAKS (DSA APP. # 01-105201 (2004)).
3. (E) ACCESSIBLE MEN'S TOILET ON FIRST FLOOR (DSA APP. # 01-105201 (2004)).
4. (E) ACCESSIBLE WOMEN'S TOILET ON FIRST FLOOR (DSA APP. # 01-105201 (2004)).
5. (E) ACCESSIBLE BOY'S TOILET ROOM ON FIRST FLOOR (DSA APP. # 01-105201 (2004)).
6. (E) ACCESSIBLE GIRL'S TOILET ROOM ON FIRST FLOOR (DSA APP. # 01-105201 (2004)).
7. (E) ACCESSIBLE UNISEX TOILET ROOM. (DSA APP. # 01-105201 (2004)).
8. (E) ACCESSIBLE BOY'S TOILET ROOM ON SECOND FLOOR (DSA APP. # 01-104206 (2004)).
9. (E) ACCESSIBLE GIRL'S TOILET ROOM ON SECOND FLOOR (DSA APP. # 01-105201 (2004)).
10. (E) ACCESSIBLE STAFF TOILET ROOM ON FIRST FLOOR (DSA APP. # 01-105201 (2004)).
11. (E) ACCESSIBLE STAFF TOILET ROOM ON SECOND FLOOR (DSA APP. # 01-105201 (2004)).

ACCESS NOTES

FOR DSA REVIEW PURPOSES, ARCHITECT HEREBY STATES THE FOLLOWING:

1.) ACCESSIBLE PATH OF TRAVEL ——————— AS INDICATED ON PLAN

IS A BARRIER FREE ACCESS ROUTE WITHOUT ANY ABRUPT LEVEL CHANGES EXCEEDING 1/2" BEVELED AT 1:2 MAX. SLOPE, OR VERTICAL LEVEL CHANGES NOT EXCEEDING 1/4" MAX. AND AT LEAST 48" WIDE. SURFACE IS SLIP RESISTANT, STABLE, FIRM, AND SMOOTH. CROSS SLOPE DOES NOT EXCEED 2% AND SLOPE IN THE DIRECTION OF TRAVEL IS LESS THAN 5% UNLESS OTHERWISE INDICATED.
PASSING SPACES: A MINIMUM OF 60"X60" ARE LOCATED NO GREATER THAN 200' APART. SEGMENTS OF ACCESSIBLE PATH OF TRAVEL HAVING CONTINUOUS GRADIENTS HAVE LEVEL AREAS A MINIMUM OF 60" LONG NO GREATER THAN 400' APART.
ACCESSIBLE ROUTE OF TRAVEL SHALL BE MAINTAINED FREE OF OVERHANGING OBSTRUCTIONS TO 80" MINIMUM AND PROTRUDING OBJECTS GREATER THAN 4" PROJECTION FROM WALL AND ABOVE 27" AND LESS THAN 80". ARCHITECT SHALL VERIFY THAT THERE ARE NO BARRIERS IN THE ROUTE OF TRAVEL.

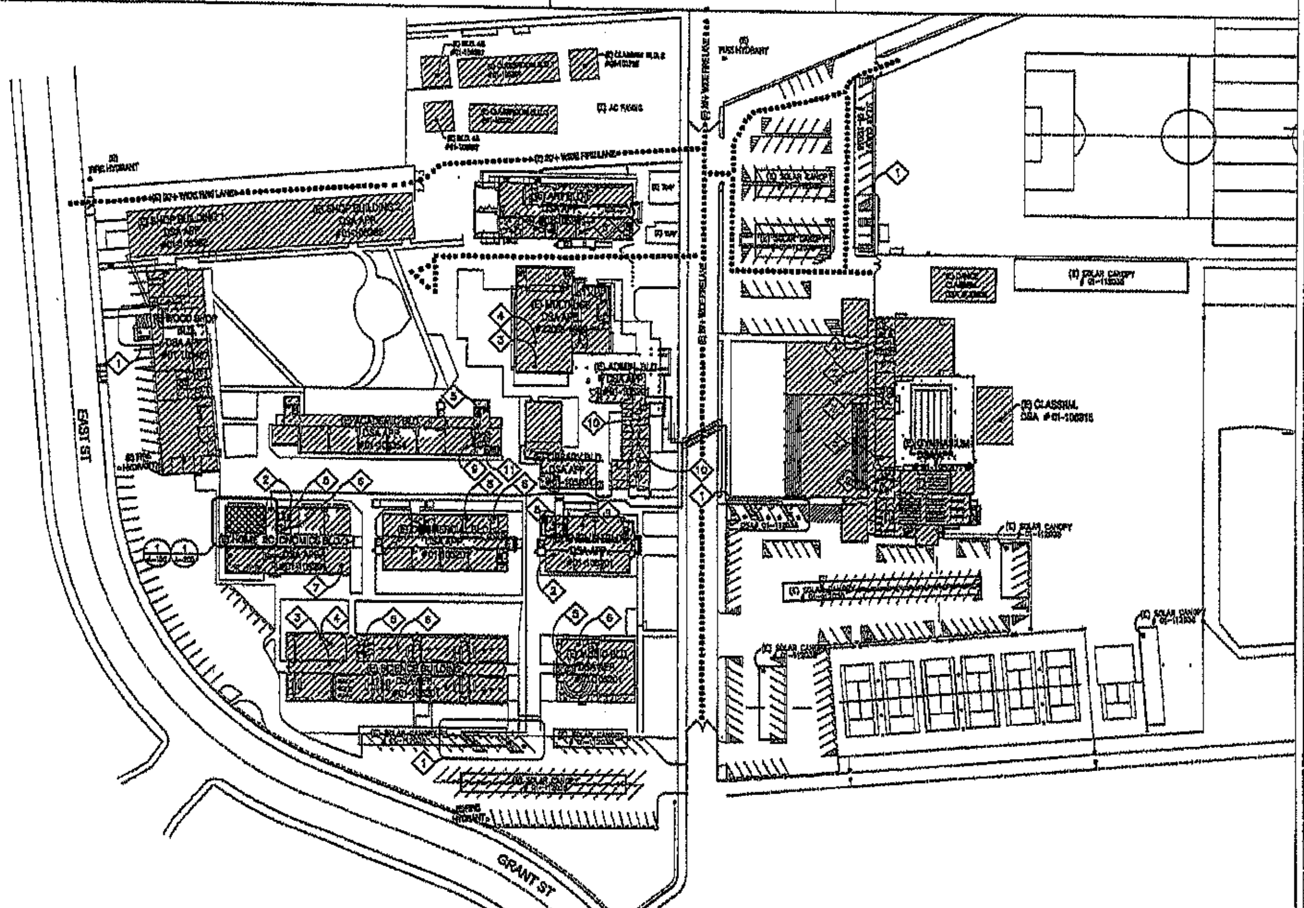
BID & CONSTRUCTION REQUIREMENTS

THE CONTRACTOR IS REQUIRED TO VERIFY IN FIELD ACTUAL EXISTING EXPOSED CONDITION AND EXTENT OF DEMOLITION AND CONSTRUCTION REQUIRED TO PERFORM THE JOB PRIOR TO BID – NOT ALL EXISTING CONDITIONS ARE SHOWN ON THE DRAWINGS.

THE ABOVE IS APPLICABLE FOR THE EXTERIOR AND THE INTERIOR OF THE BUILDING WITHIN THE AREA OF THE SCOPE OF WORK.

IT IS UNDERSTOOD THAT THESE APPROVED DRAWINGS ARE SHOWING THE INTENT OF THE SCOPE OF WORK AND ASSUMPTIONS HAVE BEEN MADE. CONTINGENCY FOR REMOVAL/RE-ROUTING, RE-CONSTRUCTING, RE-SIZING EXISTING INTERIOR & EXTERIOR UTILITY LINES SUCH AS (BUT NOT LIMITED TO) GAS, SEWER, WATER, STORM DRAINS, DRAINS, CLEAN-OUTS, ETC., EXTERIOR PLANTERS, CHAIN LINK FENCES & ACCESSORIES ETC., WALL & CEILING MOUNTED FIRE ALARM EQUIPMENT, MONITOR DEVICES & SENSORS, LIGHTING FIXTURES & EQUIPMENT, ELECTRICAL BOXES, PLUGS & SWITCHES AND RELATED CABLES & CONDUITS (CONCEALED AND NOT) MUST BE INCLUDED ON THE BASE BID.

WITH THE ABOVE THE CONTRACTOR IS ADVISED AND AGREES THAT THE DISTRICT WILL NOT NEGOTIATE ADDITIONAL COMPENSATIONS ON ITEMS NOT SHOWN ON THE DRAWINGS BUT, VISIBLE AND/OR EXPOSED AND REASONABLY ASSUMED FROM THE PROJECT SCOPE AND OBVIOUSLY REQUIRED TO BE PERFORMED IN ORDER TO ATTAIN A COMPLETE AND FINISHED PRODUCT.



MOUNT DIABLO HIGH SCHOOL - SITE PLAN

PHD ARCHITECTS

PROJECT TEAM:

STRUCTURAL ENGINEER

ELECTRICAL ENGINEER

MECHANICAL/PLUMBING ENGINEER

D.S.A. APPROVAL:

IDENTIFICATION STAMP
DIVISION OF THE STATE ARCHITECT

APP. # 01 - 112791

OCT 02 2012

PROJECT TITLE:

HOME-ECONOMICS CLASSROOM RENOVATION

REVISIONS:

PHD ARCHITECTS JOB # 12-203

SCALE: AS NOTED

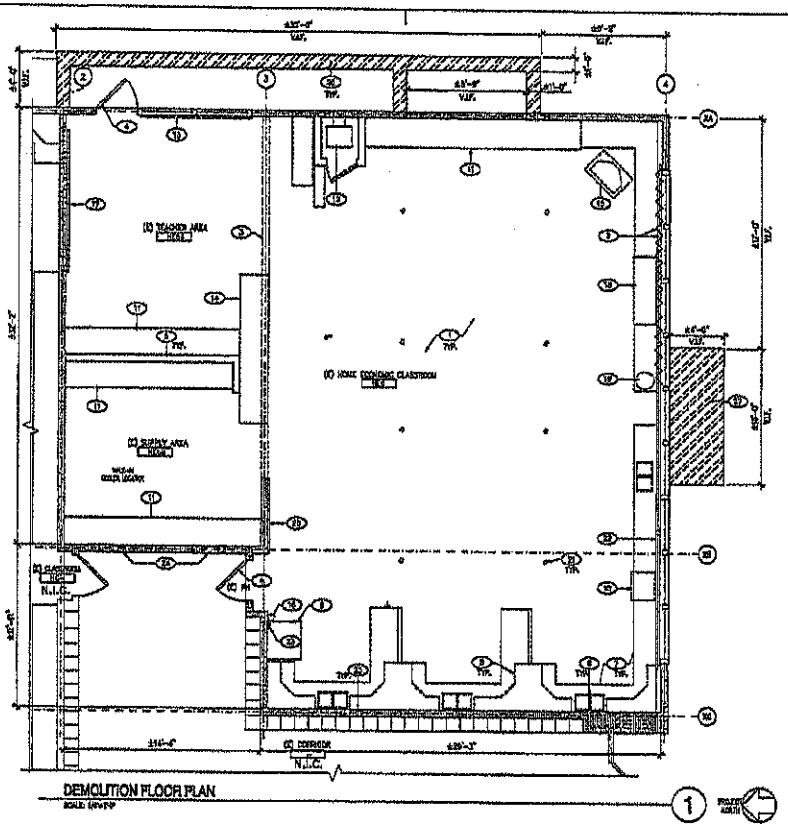
DATE: 10/2/12

SHEET NAME & NUMBER:

MOUNT DIABLO H.S. SITE PLAN / ACCESS INFO.

A-001

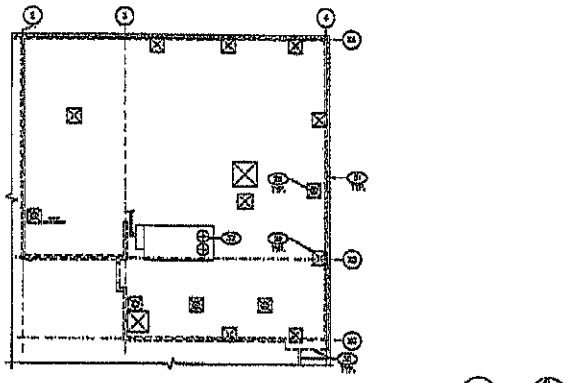
FACILITIES LEASE
EXHIBIT "B"



DEMOLITION FLOOR PLAN

SCALE: 1/4"=1'-0"

1



DEMOLITION ROOF PLAN

SCALE: 1/4"=1'-0"

2

DEMOLITION NOTES

1. GENERAL NOTE
2. SEE SHEET A-001 SITE PLAN / KEYED INFO.
3. THE WORK SHOWN ON THE CONTRACT DRAWINGS AND THE WORK OF THE SPECIFICATIONS IS INTENDED TO DESCRIBE THE EXTENT OF THE WORK TO BE PERFORMED BY THE CONTRACTOR. IT IS NOT INTENDED TO BE ALL INCLUSIVE AND IS SUBJECT TO THE TERMS OF THE CONTRACT. THE CONTRACTOR SHALL FURNISH ALL LABOR, MATERIALS, EQUIPMENT AND SERVICES NECESSARY FOR OR REASONABLY INFERABLE FROM THE CONTRACT DOCUMENTS TO PROVIDE A COMPLETE AND OPERATIONAL INSTALLATION OF THE WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROPER FITTING OF ALL WORK AND FOR THE COORDINATION OF THE WORK OF ALL TRADES. ANY ERRORS, INCONSISTENCIES OR OMISSIONS DISCOVERED IN THE CONTRACT DOCUMENTS SHALL BE REPORTED TO THE ARCHITECT FOR ADJUSTMENT BEFORE PROCEEDING WITH THE WORK IN AFFECTED AREAS. THE CONTRACTOR SHALL NOT BE ENTITLED TO ANY ADDITIONAL COMPENSATION FOR WORK PERFORMED IN AREAS WHERE THE CONTRACTOR FAILED TO REPORT ERRORS, INCONSISTENCIES OR OMISSIONS IN THE CONTRACT DOCUMENTS.
4. THE SCOPE MUST BE COORDINATED WITH THE STRUCTURAL, MECHANICAL, & ELECTRICAL DRAWINGS FOR ADDITIONAL SCOPE OF WORK.
5. EXISTING CONDITIONS MAY REQUIRE THE CONTRACTOR TO REMOVE A GREATER VOLUME OF WORK THAN INDICATED. ALL SUCH ADDITIONAL WORK SHALL BE PERFORMED AS DIRECTED BY THE ARCHITECT AND AT NO ADDITIONAL COST TO THE OWNER. THE CONTRACTOR SHALL EXAMINE THE EXISTING CONDITIONS PRIOR TO SUBMITTING A BID. NO ALLOWANCES WILL BE MADE SUBSEQUENTLY ON BEHALF OF THE CONTRACTOR FOR EXTRA WORK CAUSED BY THE CONTRACTOR'S FAILURE TO INFORM HIMSELF OF THE EXISTING CONDITIONS PRIOR TO THE SUBMISSION OF HIS BID.
6. THE CONTRACTOR IS RESPONSIBLE TO MAINTAIN/PROVIDE, AT HIS/HER EXPENSE, ALL THE TEMPORARY ENCLOSURES, COVERS, BARRIERS, DUST CONTROL, ETC. AS MAY BE REQUIRED TO PROTECT THE EXISTING BUILDING AND ITS CONTENTS FROM DAMAGE DUE TO THE CONSTRUCTION ACTIVITIES. ALL EXISTING FINISHES, EQUIPMENT, ETC. WHICH ARE DAMAGED DURING DEMOLITION, CUTTING, PATCHING, ETC., OR FOR THE WORK SHOWN, SHALL BE REPLACED WITH NEW MATERIALS TO MATCH EXISTING AS APPROVED BY THE ARCHITECT.
7. AS REQUIRED BY CBC 3407.2, WHERE REQUIRED ALL NEW WORK TO MATCH EXISTING. SEE GENERAL NOTE NO. 10 ON SHEET A-000 FOR ADDITIONAL INFORMATION.
8. WHERE A NEW OPENING IS TO BE CUT IN AN EXISTING WALL OR FLOOR, THE CONTRACTOR SHALL PROVIDE TEMPORARY SHORING AND SUPPORT AS REQUIRED TO MAINTAIN THE STRUCTURAL INTEGRITY OF THE BUILDING. SEE STRUCTURAL NOTES NO. 23 ON SHEET S-000 FOR ADDITIONAL INFORMATION.
9. ALWAYS PROVIDE A NEAT TERMINATION OF REMOVAL TO ALL SIDES THROUGH THE CEILING, WALLS OR FLOOR — NO EXPOSED EDGES, CUTS OR GAPS SHALL REMAIN. PATCH TO MATCH ADJACENT.
10. COORDINATE ALL EXISTING EQUIPMENT, FIXTURES AND APPLIANCES TO REMAIN WITH NEW — COORDINATE WITH THE OWNER AND ARCHITECT.
11. THE CONTRACTOR SHALL PROVIDE A DETAILED SITE LOGISTICS PLAN TO COORDINATE THE SEQUENCE OF WORK TO MINIMIZE THE DISRUPTION AND THE IMPACT TO THE OPERATIONS OF THE SCHOOL. THE PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE LOCATION OF CONSTRUCTION FENCING, STAGING AREAS, STORAGE AREAS, PARKING FOR CONSTRUCTION VEHICLES, ACCESS TO THE SITE, ETC. THE CONTRACTOR SHALL SUBMIT THE PLAN TO THE ARCHITECT FOR REVIEW PRIOR TO THE START OF CONSTRUCTION.
12. NOT ALL THESE NOTES MAY APPLY TO THIS PROJECT.
13. THE CONTRACTOR IS RESPONSIBLE TO REPAIR AND/OR RECONSTRUCT TO ITS ORIGINAL CONDITION ANY SITE FEATURE DAMAGED BY THE WORK.

DEMOLITION KEYNOTES

1. REMOVE (E) VCT FLOORING
2. REMOVE CURTAIN AND TRACK ASSEMBLY
3. (E) STRUCTURAL BEAM ABOVE TO REMAIN (SHOWN DASHED)
4. (E) DOOR TO REMAIN
5. DEMOLISH (E) NON-LOAD BEARING WALL ASSEMBLY
6. RETURN (E) REFRIGERATOR TO OWNER
7. REMOVE (E) BASE CABINETS W/ BACKSPLASH & ASSEMBLY
8. REMOVE (E) UPPER CABINETS ASSEMBLY
9. REMOVE (E) DOUBLE COMPARTMENT SINK, RE-ROUTE & DISCONNECT (E) PLUMBING SERVICE TO NEW LOCATION. SEE PROPOSED FLOOR PLAN ON SHT. A-200 & S.P.D.
10. (E) EQUIPMENT TO BE RETURNED TO OWNER
11. REMOVE (E) BUILT-IN TALL CABINET & DRAWERS ASSEMBLY; PATCH TO MATCH (E).
12. REMOVE (E) CLOSET & ASSEMBLY *
    * REMOVE (E) MECHANICAL EQUIPMENT AND ASSEMBLY, CUT THE (E) CONCRETE PLANTER W.P. AND REMOVE AS REQUIRED ALL ELECTRICAL CONDUITS. REMOVE THE (E) EXTERIOR GRILLES AND PREPARE FOR WALL PATCH TO MATCH (E) & ADD BLKG. AS NEED.
13. REMOVE (E) ELECTRICAL WHEELS, S.E.D.
14. REMOVE (E) BUILT-IN TEACHING WALL CABINET
15. RETURN (E) PORTABLE TV STAND AND MONITOR TO OWNER
16. RELOCATE (E) FIRE EXTINGUISHER
17. RELOCATE (E) ELECTRICAL WHEELS, S.E.D.
18. REMOVE & RETURN (E) AQUARIUM AND ASSEMBLY TO OWNER
19. REMOVE & RETURN (E) WATER HEATER & ASSEMBLY TO OWNER.
20. REMOVE (E) WHITEBOARD & ASSEMBLY
21. REMOVE (E) FLOOR OUTLETS & ASSEMBLY AND PATCH W/ CONC. AS REQ. TO INSTALL NEW VCT FLOORING. SEE SHEET A-200 & S.E.D.
22. (E) FURRED STRUD AND WINDOW SILL TRIMS TO REMAIN.
23. REMOVE (E) GAS SHUT OFF AND REPLACE WITH NEW, S.P.D.
24. (E) ELECTRICAL PANEL, S.E.D.
25. REMOVE (E) CTY. BD. & PLYWOOD AND PATCH (E) FRAMING AS REQUIRED FOR NEW UTILITY WORK — W.P. CHART NEEDED. TYP. FOR ALL WALLS FOR NEW BLOCKING, FURRED WALLS & UTILITY LINES. S.E.D. & S.P.D.
26. EXCAVATE AND TRENCH OUT (E) AC PAVING FOR UTILITY CONNECTIONS — W.P. AND COORDINATE WITH MECH & PLUMB. ENG.
27. REMOVE (E) LANDSCAPE & SOD BASE AND EXCAVATE AS REQUIRED FOR NEW MECH. SPLASH TRAP LOCATION & UTILITY CONNECTIONS — W.P.
28. EXISTING ROOF MOUNTED EQUIPMENT UNIT & ASSEMBLY TO BE REMOVED. W.P. ACTUAL CONDITION — COORDINATE WITH THE MECHANICAL DRAWINGS.
29. REMOVE EXISTING BUILT-UP ROOF FOR NEW MECH. EQUIPMENT FAN LOCATION. W.P. ACTUAL CONDITION — COORDINATE WITH THE MECHANICAL DRAWINGS.
30. (E) SHEATING OR WALL OUTLINE BELOW
31. (E) PARAPET W/ METAL CAP TO REMAIN
32. (E) MECH ROOF TOP UNIT TO REMAIN, S.E.D.

LEGEND

- EXISTING WALL TO BE REMOVED
- EXISTING NON-LOAD BEARING WALL TO BE REMOVED
- ITEM TO BE REMOVED
- EXISTING WINDOW TO BE REMOVED
- (E) PH — (E) PANIC HARDWARE

PHD ARCHITECTS

PROJECT TEAM:

STRUCTURAL ENGINEER
TBA STRUCTURAL ENGINEERS
425 BRIGHT ROAD, SUITE 104C
BRIGHTON, CA 95602
TEL: (650) 000-0000
FAX: (650) 000-0000

ELECTRICAL ENGINEER
ALLIANCE ENGINEERING CONSULTING, INC.
PATRICK HENRY DRIVE, BUILDING 19
SANTA CLARA, CA 95054
TEL: (408) 970-8400
FAX: (408) 970-8418

MECHANICAL/PLUMBING ENGINEER
SAVOIE MECHANICAL, INC.
333 W. HARVEST ROAD
SAN RAFAEL, CA 94901
TEL: (415) 000-0000
FAX: (415) 000-0000

D.S.A. APPROVAL:

CONSTRUCTION BY STATE
DIVISION OF THE STATE ARCHITECT

APP. # 01-112781

DATE: OCT 02 2012

PROJECT TITLE:

HOME ECONOMICS CLASSROOM RENOVATION

REVISIONS:

date	description
10/02/12	DSA SUBMITTAL
00/00/00	00000000000

PHD ARCHITECTS JOB #
12-203

SCALE: AS NOTED

DATE: 10/2/12

SHEET NAME & NUMBER:

DEMOLITION PLANS

A-100

EXHIBIT "C"
TO
FACILITIES LEASE

GUARANTEED PROJECT COST 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 Project Cost.** Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for **Four Hundred Fifty Three Thousand Dollars** ($453,000.00) , ("Guaranteed Project Cost"). 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 Project Cost. District shall pay the Guaranteed Project Cost to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

2.1. Cost to Perform Work.

2.1.1. **Subcontract Costs.** Payments made by the Developer to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

2.1.2. **Developer-Performed Work.** Costs incurred by the Developer for self-performed work.

2.2. General Conditions. The amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Developer for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, 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.

2.3. Fees. All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

2.4. Allowances. The following allowances are within the Guaranteed Project Cost. Developer shall be permitted to charge only its direct costs to perform the work, as indicated through documentation approved to the District. Developer shall not include in its charge(s) under a particular allowance the coordination, supervision, bond costs, overhead and profit, installation and all indirect costs associated with performing the work of each allowance.

2.4.1. **N/A**

Any unused allowance or unused portion thereof shall be deducted from the Cost of the Work. The amount to deduct shall be calculated using the steps in the "Changes in the Work" provisions of **Exhibit "D"** to the Facilities Lease including the Deductive Change Order provisions therein.

2.5. Contingency. District Contingency of Fifteen Thousand Dollars ($15,000.00) for potential additional construction costs that occur over the course of construction that Developer could have discovered during its preparation of the GPC or for scope gap, but which Developer did not include and which Developer can document to the District's satisfaction where missed by the Developer during its preparation of the GPC. The

Contingency is not intended for such things as "Changes" as further described herein. The Contingency shall not be used without the agreement of the District. The unused portion of the Contingency shall be retained by the District at the end f the Project. The Developer cannot request any additional fee for any missed costs in excess of this Contingency.

2.5.1. **N/A**

2.6. Bonds and Insurance.

2.7. Overhead and Profit.

3. Payment of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein.

3.1. Tenant Improvement Payments. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Developer **Four Hundred Seven Thousand Seven Hundred Dollars** ($407,700) ("Tenant Improvement Payment(s)"), based on the amount of Work performed according to the Developer's Schedule of Values (**Exhibit "G"** to the Facilities Lease) and pursuant to the provisions in **Exhibit "D"** to the Facilities Lease.

3.2. Lease Payments. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit "E,"** the District shall pay to Developer **Forty Five Thousand Three Hundred Dollars** ($45,300.00) ("Lease Payment(s)"), as indicated below.

3.2.1. 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 equal monthly installments for the duration of the Term.

3.2.2. The District represents that the total 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.

3.2.3. **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.

3.2.4. **Each Payment Constitutes a Current Expense of the District.**

3.2.4.1. 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.

3.2.4.2. 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.

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

3.2.4.4. 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.

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

3.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at or below the then current Prime Rate as published in the Wall Street Journal plus two percent (2 %):

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Developer (A + B)
35 days after NOC filed	**$7,550**		
65 days after NOC filed	**$7,550**		
95 days after NOC filed	**$7,550**		
125 days after NOC filed	**$7,550**		
155 days after NOC filed	**$7,550**		
185 days after NOC filed	**$7,550**		

3.2.6. **Financed Portion of Lease Payments.** The District does not at this time believe it will need the Developer to finance a portion of the Lease Payments. The District and the Developer have agreed that the District may request at a future time that the Developer agree to convert a portion of the Tenant Improvement Payments into Lease Payments and revise the Lease Payment schedule. If the District makes this request, the District and the Developer agree to negotiate in good faith regarding whether Developer can provide that financing, the amount of that financing, and the terms of that financing, which, if agreed to, shall be memorialized in a written amendment to the Facilities Lease and approved by the Parties.

3.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments ever exceed the Guaranteed Project Price as defined herein, unless modified pursuant to **Exhibit "D"** to the Facilities Lease.

4. Changes to Guaranteed Project Cost.

4.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in

the Tenant Improvement Payments and paid upon the payment request from the Developer when the work is performed, or deducted from the next payment request from the Developer, as applicable.

4.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit "D"** to the Facilities Lease.

4.3. Cost Savings. Developer shall work cooperatively with Architect, 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 Project Cost shall be identified by Developer, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Developer shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Developer for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Developer shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

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 total remaining unpaid Lease Payments as of the date the option is exercised ("Option Price").

5.2. District shall provide Developer no less than fourteen (14) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("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 all reasonably necessary documents 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 thirty-five (35) days after the Developer completes the Project and the District accepts the Project.

6. Agreement for Preliminary Services ("PSA"). The Parties acknowledge that Developer may have performed preliminary services related to the Project under a PSA.

EXHIBIT "D"
TO
FACILITIES LEASE

GENERAL CONSTRUCTION PROVISIONS

TABLE OF CONTENTS

1. CONTRACT TERMS AND DEFINITIONS 1

1.1. Definitions 1

1.2. Laws Concerning The Contract 4

1.3. No Oral Agreements 4

1.4. No Assignment 4

1.5. Notice And Service Thereof 4

1.6. No Waiver 5

1.7. Substitutions For Specified Items 5

1.8. Materials and Work 5

2. [RESERVED] 6

3. ARCHITECT 6

4. CONSTRUCTION MANAGER 6

5. INSPECTOR, INSPECTIONS, AND TESTS 7

5.1. Project Inspector 7

5.2. Tests and Inspections 7

5.3. Costs for After Hours and/or Off Site Inspections 8

6. DEVELOPER 8

6.1. Status of Developer 8

6.2. Developer's Supervision 8

6.3. Duty to Provide Fit Workers 9

6.4. Purchase of Materials and Equipment 10

6.5. Documents on Work 10

6.6. Preservation of Records 11
6.7. Integration of Work 11
6.8. Obtaining Licenses 11
6.9. Work to Comply With Applicable Laws and Regulations 11
6.10. Safety/Protection of Persons and Property 12
6.11. Working Evenings and Weekends 14
6.12. Cleaning Up 15
7. SUBCONTRACTORS 15
8. OTHER CONTRACTS/CONTRACTORS 16
9. DRAWINGS AND SPECIFICATIONS 17
10. DEVELOPER'S SUBMITTALS AND SCHEDULES 18
10.1. Construction Schedule 18
10.2. Schedule of Values 18
10.2. Monthly Progress Schedule(s) 19
10.3. Material Safety Data Sheets (MSDS) 20
11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS 20
11.1. Site Investigation 20
11.2. Soils Investigation Report 20
11.3. Access to Work 21
11.4. Layout and Field Engineering 21
11.5. Utilities & Sanitary Facilities 21
11.7. Surveys 21
11.8. Regional Notification Center 21
11.9. Existing Utility Lines 21
11.10. Notification 22
11.11. Hazardous Materials 22
11.12. No Signs 22

12. TRENCHES **22**

12.1. Trenches Greater Than Five Feet **22**

12.2. Excavation Safety **23**

12.3. No Tort Liability of District **23**

12.4. No Excavation Without Permits **23**

12.5. Discovery of Hazardous Waste and/or Unusual Conditions **23**

13. INSURANCE AND BONDS **23**

13.1 Developer's Insurance **24**

13.2 Contract Security - Bonds **24**

14. WARRANTY/GUARANTEE/INDEMNITY **24**

14.1. Warranty/Guarantee **24**

14.2. Indemnity **25**

15. TIME **25**

15.1. Computation of Time / Adverse Weather **25**

15.2. Hours of Work **25**

15.3. Progress and Project Completion **25**

15.4. Schedule **26**

15.5. Expeditious Completion **26**

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES **26**

16.1. Liquidated Damages **26**

16.2. Excusable Delay **26**

16.3. No Additional Compensation for Delays Within Developer's Control **27**

16.4. Float or Slack in the Schedule **27**

17. CHANGES IN THE WORK **28**

17.1. No Changes Without Authorization **28**

17.2. Architect Authority **28**

17.3. Change Orders **28**

17.4. Price Request 28
17.5. Proposed Change Order 29
17.6. Format for Proposed Change Order 29
17.7. Change Order Certification 30
17.8. Determination of Change Order Cost 30
17.9. Deductive Change Orders 31
17.10. Discounts, Rebates, and Refunds 31
17.11. Accounting Records 31
17.12. Notice Required 31
17.13. Applicability to Subcontractors 31
17.14. Alteration to Change Order Language 32
17.15. Failure of Developer to Execute Change Order 32
17.16. Allowances 32
18. REQUESTS FOR INFORMATION 32
19. PAYMENTS 32
19.1. Contract Price 32
19.2. Applications for Tenant Improvement Payments 32
19.3. District's Approval of Application for Tenant Improvement Payment 34
20. COMPLETION OF THE WORK 38
20.1. Completion 38
20.2. Close-Out Procedures 38
20.3. Final Inspection 39
20.4. Costs of Multiple Inspections 40
20.5. Beneficial Occupancy or Use Prior to Project Completion 40
21. FINAL PAYMENT 41
21.1. Final Payment 41
21.2. Prerequisites for Final Tenant Improvement Payment 41

22. UNCOVERING OF WORK 42

23. NONCONFORMING WORK AND CORRECTION OF WORK 42

23.1. Nonconforming Work 42

23.2. Correction of Work 43

23.3 District's Right to Perform Work 43

24. TERMINATION AND SUSPENSION 44

24.1. Emergency Termination of Public Contracts Act of 1949 44

25. DISPUTES AND CLAIMS 44

25.1. Performance During Dispute And Claim Resolution Process 44

25.2. Waiver 44

25.3. Intention 45

25.4. Exclusive Remedy 45

25.5. Other Provisions 45

25.6. Subcontractors 45

25.7. Dispute And Claim Resolution Process 45

26. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS 49

26.1. Labor Compliance Program 49

26.2. Wage Rates, Travel and Subsistence 49

26.3. Hours of Work 50

26.4. Payroll Records 51

26.5. Apprentices 52

26.6. Non-Discrimination 53

26.7. Labor First Aid 54

27. MISCELLANEOUS 54

27.1. Assignment of Antitrust Actions 54

27.2. Excise Taxes 55

27.3. Taxes 55

27.4. Shipments 55

This Exhibit D constitutes the "General Construction Provisions" that govern the overall construction and Project Completion by Developer.

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, heat, or cold conditions in excess of the norm for the location and time of year it occurred, and (2) at the Project.

1.1.2. Allowance: Amount(s) included in the Guaranteed Project Cost that the Parties agree shall be used, if used at all, to pay for the construction of the specific scope of work identified with that amount of money. By agree to an Allowance amount, the Parties agree (1) the specific scope of Work may not be necessary; (2) the cost to the perform the specific scope of Work cannot be determined on the Effective Date; (3) is a reasonable estimate of the cost to do the specific scope of Work.

1.1.3. Approval, Approved, and/or Accepted: Refer to written authorization, unless stated otherwise.

1.1.4. Architect: 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 District's Architect on this Project or the Architect's authorized representative.

1.1.5. Beneficial Occupancy: Occupancy of the Project by the District for its intended purpose and which produces relatively little interference with the Developer in completing construction.

1.1.6. Change Order: A written order to the Developer authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Guaranteed Project Cost or Contract Time.

1.1.7. 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.

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

1.1.9. Contract, Contract Documents: The Contract consists exclusively of the documents evidencing the agreement of the District and Developer, identified as the Contract Documents. The Contract Documents consist of the following documents:

- **1.1.9.1.** Site Lease
- **1.1.9.2.** Facilities Lease, with all of its Exhibits
- **1.1.9.3.** These General Construction Provisions
- **1.1.9.4.** Noncollusion Affidavit (Document 00330)
- **1.1.9.5.** Performance Bond (Document 00610)
- **1.1.9.6.** Payment Bond (Developer's Labor & Material Bond) (Document 00620)
- **1.1.9.7.** Hazardous Materials Procedures and Requirements (Document 00810)

1.1.9.8. Guarantee Form (Document 00890)
1.1.9.9. Workers' Compensation Certification (Document 00905)
1.1.9.10. Prevailing Wage Certification (Document 00910)
1.1.9.11. Disabled Veterans Business Enterprise Participation Certification (Document 00912)
1.1.9.12. Drug-Free Workplace Certification (Document 00915)
1.1.9.13. Smoke-Free Environment Certification (Document 00920)
1.1.9.14. Hazardous Materials Certification (Document 00925)
1.1.9.15. Lead-Based Paint Certification (Document 00930)
1.1.9.16. Imported Materials Certification (Document 00935)
1.1.9.17. Criminal Background Investigation/Fingerprinting Certification (Document 00940)
1.1.9.18. Roofing Contract Financial Interest Certification
1.1.9.19. Labor Compliance Program Information and Forms
1.1.9.20. All Division 1 Documents, which shall only supplement these General Construction Provisions, but shall not control if their provisions contradict these Construction Provisions
1.1.9.21. All Plans, Technical Specifications, and Drawings
1.1.9.22. Any and all addenda to any of the above documents
1.1.9.23. Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.10. Contract Time: The time period stated in the Facilities Lease for Project Completion.

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

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

1.1.13. Developer (or **"Contractor")**: The entity 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.

1.1.14. District (or **"Owner"):** 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,

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

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

1.1.15. 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.

1.1.16. DSA: Division of the State Architect.

1.1.17. Guaranteed Project Cost (or **"Contract Price")**: The total monies payable to the Developer under the terms and conditions of the Contract Documents.

1.1.18. Labor Compliance Program: (or "LCP") If this Project is funded at least in part with State bond funds, then the LCP is the program and related documents and practices necessary for the program by

which the District and/or its designee will ensure that the Developer and all Subcontractors pay prevailing wages to all workers on the Project.

1.1.19. 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.

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

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

1.1.22. Project Completion: Where the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

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

1.1.24. 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 Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to District.

1.1.25. 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.

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

1.1.27. Request for Substitution: 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.

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

1.1.29. 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 General Construction Provisions.

1.1.30. 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.

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

1.1.32. Site: The Project site as shown on the Drawings.

1.1.33. Specifications: That portion of the Contract Documents, Division 1 through Division 17, 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.

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

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

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

1.1.37. Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for Project Completion.

1.2. Laws Concerning The Contract

Contract is subject to all provisions of the Constitution and laws of California 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, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

1.4. No Assignment

Except as specifically permitted in the Facilities Lease, Developer shall not assign this Contract 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 be come due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract 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 this Contract. 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 Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served as indicated in the Facilities Lease.

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 this Contract 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, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1.7. Substitutions For Specified Items

Developer shall not substitute any items identified in the Contract Documents without complying with the procedures indicated in the Contract Documents and without prior written approval of the District.

1.8. Materials and Work

1.8.1. Except as otherwise specifically stated in this Contract, 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 this Contract within the Contract Time.

1.8.2. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

1.8.3. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.

1.8.4. For all materials and equipment specified or indicated in the Drawings, the Developer shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended, including 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. 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 Contract by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Developer shall, upon demand from District, present documentary evidence showing that orders have been placed.

1.8.6. District reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at 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 withheld 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 Project Completion 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 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 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 this Contract and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of this Contract and Title is transferred to the District pursuant to the Facilities Lease. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

2. [RESERVED]

3. ARCHITECT

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

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

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

3.4. Developer shall provide District and the Construction Manager with a copy of all written communication between Developer and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and 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 on the District's behalf. After execution of the Contract, all correspondence and/or instructions from Developer and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Developer's responsibility.

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

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

5. INSPECTOR, INSPECTIONS, AND TESTS

5.1. Project Inspector

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

5.1.2. No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Developer shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Developer from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to stop work whenever the Developer and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Developer shall instruct its Subcontractors and employees accordingly.

5.1.3. If Developer and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this shall only be done if it is allowable pursuant to applicable regulations and DSA. If the off-site inspections are more frequent than are reasonable for the type of off-site inspection, those inspections shall be at the expense of the Developer.

5.2. Tests and Inspections

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

5.2.2. The District will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested shall be by the laboratory or the District's representative and not by the Developer. The Developer shall notify the District's representative a sufficient time in advance of its readiness for required observation or inspection.

5.2.3. The Developer shall notify the District's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested. These notifications shall be submitted in all instances via hard copy and,

if requested by the Project Inspector(s), also electronically via an internet-based notification/reporting system.

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

5.2.5. The District will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the District and reimbursed by the Developer or deducted from the Guaranteed Project Cost.

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

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

6. DEVELOPER

Developer shall construct the Work for the Contract price including any adjustment(s) to the Guaranteed Project Cost pursuant to provisions herein regarding changes to the Guaranteed Project Cost. Except as otherwise indicated herein , Developer shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Project Completion..

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 employees as they relate to the services to be provided during the course and scope of their employment. Developer, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Developer's activities to determine compliance with the terms of this Contract.

6.1.2. As required by law, Developer and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 98826, http://www.cslb.ca.gov.

6.2. Developer's Supervision

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

6.2.2. The project manager and construction superintendent shall both speak fluently the predominant language of the Developer's employees.

6.2.3. Before commencing the Work herein, Developer shall give written notice to District of the name of its project manager and construction superintendent. Neither the Developer's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Developer's project manager and/or construction superintendent proves to be unsatisfactory to Developer, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Developer shall notify District in writing or if such project manager or construction superintendent are no longer employed by Developer. The Developer's project manager and construction superintendent shall each represent Developer, and all directions given to Developer's project manager and/or construction superintendent shall be as binding as if given to Developer.

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

6.3. Duty to Provide Fit Workers

6.3.1. Developer and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work 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.

6.3.2. 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.

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

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

6.4. Personnel

6.4.1. All persons working for Developer and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the job site.

6.4.2. The Developer shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf on the Developer on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The superintendent shall not be changed without the written consent of the District unless the superintendent ceases to be employed by the Developer.

6.4.3. The Developer shall employ a competent estimator and necessary assistants, or contact for sufficient services of an estimating consultant and to process proposed change orders. The estimator shall have a minimum of five (5) years experience in estimating. The estimator shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The estimator shall not be changed without the written consent of the District unless the estimator ceases to

be employed by the Developer. The Developer shall submit PCO's requested by the District within fourteen (14) calendar days.

6.4.4. The Developer shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years experience in scheduling. The scheduler shall be satisfactory to the District and, if not satisfactory, shall be replaced by the Developer with one that is acceptable. The scheduler shall not be changed without the written consent of the District unless the scheduler ceases to be employed by the Developer.

6.4.5. Developer shall at all times enforce strict discipline and good order among Developer's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

6.4.6. If Developer or any Subcontractor on the Project site fails to comply with any provision of paragraph 6.4, the District may have the offending person(s) immediately removed from the site, and such person(s) shall be replaced within three (3) days, at no additional expense to the District. Developer, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

6.5. Purchase of Materials and Equipment

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

6.6. Documents on Work

6.6.1. Developer shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes 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 Developer, title 24, part 1, California Code of Regulations, § 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.

6.6.2. Daily Job Reports.

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

6.6.2.1.1. A brief description of all Work performed on that day.
6.6.2.1.2. A summary of all other pertinent events and/or occurrences on that day.
6.6.2.1.3. The weather conditions on that day.
6.6.2.1.4. A list of all Subcontractor(s) working on that day,
6.6.2.1.5. A list of each Developer employee working on that day and the total hours worked for each employee.

6.6.2.1.6. A complete list of all major equipment on Site that day, whether in use or not.
6.6.2.1.7. All complete list of all materials, supplies, and equipment delivered on that day.
6.6.2.1.8. A complete list of all inspections and tests performed on that day.

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

6.7. Preservation of Records

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, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Developer, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Developer shall make available at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above.

6.8. Integration of Work

6.8.1. 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.

6.8.2. All cost caused by defective or ill-timed Work shall be borne by Developer, inclusive of repair work.

6.8.3. 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.

6.9. Obtaining Licenses

Except for DSA fees or charges, Developer shall secure and pay for all of its required licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the licenses, and certificates are legally required to continue the Work without interruption. The Developer shall obtain and pay, only when legally required, for all licenses and certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits and certificates shall be delivered to District before demand is made for final payment.

6.10. Work to Comply With Applicable Laws and Regulations

6.10.1. 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 therewith, or should Developer become aware of the development of conditions not covered by Contract Documents that will 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 Contract for changes in Work.

6.10.1.1. National Electrical Safety Code, U. S. Department of Commerce
6.10.1.2. National Board of Fire Underwriters' Regulations
6.10.1.3. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
6.10.1.4. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
6.10.1.5. Industrial Accident Commission's Safety Orders, State of California
6.10.1.6. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
6.10.1.7. Americans with Disabilities Act
6.10.1.8. Education Code of the State of California
6.10.1.9. Government Code of the State of California
6.10.1.10. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
6.10.1.11. Public Contract Code of the State of California
6.10.1.12. California Art Preservation Act
6.10.1.13. U. S. Copyright Act
6.10.1.14. U. S. Visual Artists Rights Act

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

6.10.3. 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.

6.10.4. 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 be responsible for satisfying requirements of such bodies or agencies.

6.11. Safety/Protection of Persons and Property

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

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

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

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

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

6.11.6. Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Project Completion and final acceptance by District. Developer shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

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

6.11.8. Hazards Control – Developer shall store volatile wastes in covered metal containers and remove them from the Site regularly, which shall be daily when appropriate for the type of hazardous wastes to be removed. Developer shall prevent accumulation of wastes that create hazardous conditions. Developer shall provide adequate ventilation during use of volatile or noxious substances.

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

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

6.11.11. <u>Storm Water Permits</u>. 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.

6.11.11.1. Developer shall perform the Work of the Project related to being the District's Qualified SWPPP (Storm Water Pollution Prevention Plan) Practitioner ("QSP").

6.11.11.2. As the District's QSP, Developer shall be responsible for storm water and non-storm water visual observations, sampling, and analysis per the District's SWPPP.

6.11.11.3. Developer shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the District.

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

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

6.11.14. All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the District during the entire progress of the Work.

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

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

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

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

6.11.19. Developer, Developer's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a school site. No verbal or physical contact with neighbors, students, and faculty, profanity, or inappropriate attire or behavior will be permitted. District may require Developer to permanently remove non-complying persons from Project Site.

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

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

6.12. <u>Working Evenings and Weekends</u>

Developer may be required to work evenings and/or weekends at no additional cost to the District. Developer shall give the District seventy-two (72) hours notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work only upon District's approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any Inspector charges necessitated by the Developer's evening, weekend and/or legal holiday work, unless the District has agreed to be responsible for such costs at the District's expense in advance of the evening and/or weekend work.

6.13. Cleaning Up

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

6.13.2. Developer at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Developer shall not leave debris under, in, or about the Premises, 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 Contract is for work on an existing facility, Developer shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Developer shall comply with all related provisions of the Specifications.

6.13.3. If the Construction Manager, Architect, or District observes the accumulation of trash and debris, the District will give the Developer a 24-hour written notice to mitigate the condition.

6.13.4. Should the Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Guaranteed Project Cost, or District may withhold those amounts from payment(s) to Developer.

7. SUBCONTRACTORS

7.1. Developer shall provide the District with information for all of Developer's Subcontracts and Subcontractors.

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

7.3. Bidding for Subcontractor Work

7.3.1.1. Developer is required to receive at least three (3) to seven (7) bona fide bids from Subcontractors for all scopes of work on the Project that constitute more than three percent (3%) of the total Project scope. Prior to the Developer seeking bids, the District and Developer shall agree to the minimum number of Subcontractor bids required for each scope and/or trade.

7.3.1.2. Developer shall provide all bids received from all Subcontractors to the District and shall justify, to the District's satisfaction, if Developer does not choose the lowest bidding Subcontractor for a specific scope of work.

7.4. Developer agrees to bind every Subcontractor by terms of Contract as far as those terms are applicable to Subcontractor's work including, without limitation, all provisions and requirements of the District's Labor Compliance Program ("LCP"), if an LCP is in force on this Project. If Developer shall subcontract any part of this Contract, 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, as it is for acts and omissions of persons directly employed by Developer. The divisions or sections of the Specifications are not intended to control the Developer in dividing the Work among Subcontractors or limit the work performed by any trade.

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

7.6. 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 all including, without limitation, section 1775 and the Developer's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

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

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

7.9. Developer must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General 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. In addition to Developer's obligation to protect its own Work, Developer shall protect the work of any other contractor that Developer encounters while working on the Project.

8.3. If any part of Developer's Work depends for proper execution or results upon work of District or any other contractor, the Developer shall inspect and promptly report to the District in writing before proceeding with its Work 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.

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 this Contract in light of the other contracts, if any.

8.6. Nothing herein contained shall be interpreted as granting to Developer exclusive occupancy of the Site, the Premises, or of the Project. Developer shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Developer's Contract, 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 for the Project is to be found as an index on the Drawings themselves, and/or may be provided to the Developer and/or in the Table of Contents.

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

9.3. Trade Name or Trade Term. It is not the intention of this Contract 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, Developer shall promptly notify District and Architect in writing, and any necessary changes shall be made as provided in the Contract Documents.

9.6. 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 General 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 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. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

9.7. 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 within the limits specified. Developer shall bear all expense of correcting work done contrary to said laws, ordinances, rules, and regulations and for which the Developer knew or reasonably should have known did not comply with those laws, ordinances, rules, and regulations.

9.8. Ownership of Drawings

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

10. DEVELOPER'S SUBMITTALS AND SCHEDULES

10.1. Construction Schedule

The Developer shall comply with the construction schedule attached to the Facilities Lease as **Exhibit F** ("Construction Schedule") and shall provide all schedules and construction progress documentation as required in the Contract Documents**.** All items on the Schedule of Values must have a specific completion date on the Construction Schedule.

10.2. Schedule of Values

The Developer has provided and the District has approved a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Project Cost and subdivided into component parts. This schedule of values includes, at a minimum, the following information and the following structure:

10.2.1.1. Divided into at least the following categories:

10.2.1.1.1. Overhead and profit;
10.2.1.1.2. Supervision;
10.2.1.1.3. General conditions;
10.2.1.1.4. Layout;
10.2.1.1.5. Mobilization;
10.2.1.1.6. Submittals;
10.2.1.1.7. Bonds and insurance;
10.2.1.1.8. Closeout documentation;
10.2.1.1.9. Demolition;
10.2.1.1.10. Installation;
10.2.1.1.11. Rough-in;
10.2.1.1.12. Finishes;
10.2.1.1.13. Testing;
10.2.1.1.14. Punch list and acceptance.

10.2.1.2. Divided by each of the following areas:

10.2.1.2.1. Site work;
10.2.1.2.2. By each building;
10.2.1.2.3. By each floor.
10.2.1.2.4. By division of work.

10.2.1.3. The schedule of values shall not provide for values any greater than the following percentages of the Guaranteed Project Cost:

10.2.1.3.1. Mobilization and layout combined to equal not more than 1%;
10.2.1.3.2. Submittals, samples and shop drawings combined to equal not more than 2%,
10.2.1.3.3. Bonds and insurance combined to equal not more than 3%.
10.2.1.3.4. Punchlist and acceptance value shall not be no less than 1%.
10.2.1.3.5. No Schedule of Value (except noted above) shall be greater than 1%.

10.2.1.4. Closeout Documentation shall have a value in the schedule of values of not less than 2%.

10.2.1.5. 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.

10.3. **Safety Plan.** Developer's Safety Plan specifically adapted for the Project. Developer's Safety Plan shall comply with the following requirements:

10.3.1. All applicable requirements of California Division of Industrial Safety ("CalOSHA") and/or of the United States Occupational Safety and Health Administration ("OSHA").

10.3.2. All provisions regarding Project safety, including all applicable provisions in these General Construction Provisions.

10.3.3. Developer's Safety Plan shall be in English and in the language(s) of the Developer's and its Subcontractors' employees.

10.4. **Complete Subcontractor List.** The name, address, telephone number, facsimile number, California State Developers License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for Project Completion, plus all information required in the Contract Documents. This includes the subcontractor Bid and fully executed Contract.

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

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

10.7. 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.

10.8. **Monthly Progress Schedule(s)**

10.8.1. Upon request by the District, Developer shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last

Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be sent 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.

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

10.9. Material Safety Data Sheets (MSDS)

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

11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS

11.1. Site Investigation

Developer has made a careful investigation of the Site and is familiar with the requirements of the Contract and has accepted the known existing conditions of the Site.

11.2. Soils Investigation Report

11.2.1. When a soils investigation report obtained from test holes at Site is available, that report shall be available to the Developer but shall not be a part of this Contract. 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. Developer may reasonably rely thereon, however the Districts makes no warranty regarding the completeness or accuracy of any such report or other information regarding subsurface conditions. Developer acknowledges that it has made visual examination of Site and has made whatever tests Developer deems appropriate to determine underground condition of soil.

11.2.2. If Developer encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from those ordinarily encountered in the Work of the character provided for in the Contract Documents, Developer shall give notice to the District immediately before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions.

11.2.2.1. The District will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Developer's cost of, or time required for, performance of any part of the Work, will equitably adjustment the Contract Sum or Contract Time, or both.

11.2.2.2. If the District determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the District will notify Developer in writing, stating the reasons.

11.2.2.3. If after receiving the response, Developer still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

11.2.2.4. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably observable.

11.3. Access to Work

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

11.4. Layout and Field Engineering

11.4.1. All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by Developer at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by District and Architect.

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

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

11.5. Utilities & Sanitary Facilities

Developer shall provide all required utilities and sanitary facilities.

11.6. Surveys

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

11.7. Regional Notification Center

The Developer, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Developer unless an inquiry identification number has been assigned to the Developer or any Subcontractor and the Developer has given the District the identification number. Any damages arising from Developer's failure to make appropriate notification shall be at the sole risk and expense of the Developer. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Developer and shall not be considered for an extension of the Contract time.

11.8. Existing Utility Lines

11.8.1. 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 this Contract 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 Project Completion caused by failure of District or the owner of a utility to provide for removal or relocation of such utility facilities.

11.8.2. Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Developer of responsibilities to exercise reasonable care nor 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.

11.8.3. No provision herein shall be construed to preclude assessment against Developer for any other delays in Project Completion. 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.

11.8.4. 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. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the District shall be borne by the Developer.

11.9. 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).

11.10. 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.

11.11. No Signs

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

12. TRENCHES

12.1. Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Guaranteed Project Cost exceeds $25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Developer shall, in advance of excavation, promptly submit to the District and/or a registered civil or structural engineer employed by

the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

12.2. Excavation Safety

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

12.3. No Tort Liability of District

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

12.4. No Excavation Without Permits

The Developer shall not commence any excavation Work until it has secured all necessary permits including the required 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, the Developer shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

12.5.1.1. Material that the Developer believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that 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 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.

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

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

13. INSURANCE AND BONDS

13.1. Developer's Insurance. The Developer shall comply with the insurance requirements as indicated in the Facilities Lease.

13.2. Contract Security - Bonds

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

13.2.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.

13.2.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Contract 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 Project Cost.

13.2.3. All bonds related to this Project shall be on the forms provided in the Contract Documents and shall comply with all requirements of the Contract Documents.

14. WARRANTY/GUARANTEE/INDEMNITY

14.1. Warranty/Guarantee

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

14.1.2. In addition to guarantees required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the later of the following dates:

14.1.2.1. Project Completion,

14.1.2.2. The commissioning date for the Project, if any.

At the District's sole option, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of completion as defined above without expense whatsoever to District. 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.

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

14.1.4. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee 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.

14.1.5. 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. Computation of Time / Adverse Weather

15.1.1. The Developer will only be allowed a time extension for Adverse Weather conditions if requested by Developer and only if all of the following conditions are met:

15.1.1.1. The weather conditions constitute Adverse Weather, as defined herein;

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

15.1.1.3. The Developer's crew is dismissed as a result of the Adverse Weather; and

15.1.1.4. The number of days of delay for the month exceeds the following parameters:

January	**11**	July	**0**
February	**10**	August	**0**
March	**10**	September	**1**
April	**6**	October	**4**
May	**3**	November	**7**
June	**1**	December	**10**

15.1.2. A day-for-day extension will only be allowed for those days in excess of those indicated herein.

15.1.3. 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.

15.2. Hours of Work

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. Progress and Project Completion

15.3.1. Time of the Essence

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

15.3.2. No Commencement Without Insurance

The Developer shall not commence operations on the Project or elsewhere prior to the effective date of insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. 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.

15.3.3. Sufficient Forces

Developer and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule to obtain Project Completion within the Contract Time.

15.4. Schedule

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

15.5. Expeditious Completion

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

16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

16.1. Liquidated Damages

Developer and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Developer shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Facilities Lease for each calendar day of delay beyond the Contract Time. 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 beyond the Contract Time which are not the fault of Developer or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Developer shall, within five (5) calendar days of any delay, notify District in writing of causes of delay including documentation and facts explaining the 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 shall notify the District pursuant to the claims provisions in these General 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 Project Completion might be delayed thereby.

16.2.3. In the event the Developer requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Developer fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

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

16.2.3.2. Specific logical ties to the Construction 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. (A portion of any delay of seven (7) days or more must be provided.)

16.2.3.3. A revised Construction Schedule must be submitted.

16.3. No Additional Compensation for Delays Within Developer's Control

16.3.1. Developer is aware that governmental agencies, 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 Project Cost, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Thus, Developer is not entitled to make a claim for damages or 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 or it's consultants, employees, architects or contractors are responsible for the delay;

16.3.2.2. The delay was not reasonably anticipated by District and Developer; and

16.3.2.3. Developer complies with the claims procedure of the Contract Documents.

16.4. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Developer, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Developer shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

17. CHANGES IN THE WORK

17.1. No Changes Without Authorization

17.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order 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. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. 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. 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 Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Developer and District. In the event that Developer proceeds with any change in Work without a Change Order executed by the District, Developer waives any claim of additional compensation or time for that additional work.

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

17.2. Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, 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 or by Architect's response(s) to RFI(s).

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 governing board), the Developer, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:

17.3.1.1. A description of a change in the Work;

17.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

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

17.4. Price Request

17.4.1. Definition of Price Request

A Price Request ("PR") is a written request prepared by the District or the Architect requesting the Developer to submit to the District and/or the Architect an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

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

17.5. Proposed Change Order

17.5.1. 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.

17.5.2. Changes in Guaranteed Project Cost

A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

17.5.3. Changes in Time

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Developer fails to request a time extension in a PCO, then the Developer is thereafter precluded from requesting time and/or claiming a delay.

17.5.4. Unknown and/or Unforeseen Conditions

If Developer submits a PCO requesting an increase in Guaranteed Project Cost 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 demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Developer shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

17.6. Format for Proposed Change Order

17.6.1. The following format shall be used as applicable by the District and the Developer (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation. The Parties acknowledge that they intend to revise the format for proposed change orders when the Parties enter into an agreement and/or amendment for Increment Two.

	SUBCONTRACTOR PERFORMED WORK	**ADD**	**DEDUCT**
(a)	**Material** (attach itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		

(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**SUBTOTAL**		
(e)	**Add Subcontractor's overhead and profit,** not to exceed ten percent (10%) of **item (d)**		
(f)	**SUBTOTAL**		
(g)	**Add Developer's fee, overhead, profit & general conditions**, not to exceed five percent (5.0%) of the sum of **item (f)**		
(h)	**SUBTOTAL**		
(i)	**Add Bond and Insurance,** not to exceed one and one half percent (1.5%) of **Item (h)**		
(j)	**TOTAL**		
(k)	**Time**	**_____ Days**	

	DEVELOPER PERFORMED WORK	**ADD**	**DEDUCT**
(a)	**Material** (attach itemized quantity and unit cost plus sales tax)		
(b)	**Add Labor** (attach itemized hours and rates, fully encumbered)		
(c)	**Add Equipment** (attach suppliers' invoice)		
(d)	**SUBTOTAL**		
(e)	**Add Developer's fee, overhead, profit & general conditions**, not to exceed fifteen percent (15.0%) of the sum of **item (d)**		
(f)	**SUBTOTAL**		
(i)	**Add Bond and Insurance,** not to exceed one and one half percent (1.5%) of **item (f)**		
(j)	**TOTAL**		
(k)	**Time**	**_____ Days**	

17.7. Change Order Certification

17.7.1. All Change Orders and PCOs must include the following certification by the Developer:

The undersigned Developer approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, 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. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Developer's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.8. Determination of Change Order Cost

17.8.1. The amount of the increase or decrease in the Guaranteed Project Cost 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:

17.8.1.1. District acceptance of a PCO;

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

17.8.1.3. By agreement between District and Developer.

17.8.2. If the District has put in contingency(s) and/or allowance(s) in **Exhibit "C"** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit "C"** and if agreed to by the District.

17.9. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Developer offers a proposed amount for a deductive Change Order(s), Developer shall include a minimum of five percent (5%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) profit and overhead to be deducted with the amount of its deducted work. Any deviation from this provision shall not be allowed.

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 the Developer, and the Developer shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Developer's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Developer with early payment in order to secure such discounts and rebates.

17.11. Accounting Records

With respect to portions of the Work performed by Change Orders, the Developer shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Developer is required to maintain under the Contract Documents.

17.12. Notice Required

If the Developer desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. 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 Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.13. Applicability to Subcontractors

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

17.14. Alteration to Change Order Language

Developer shall not alter Change Orders or reserve time in Change Orders. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.15. Failure of Developer to Execute Change Order

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

17.16. Allowances

To the extent any item or portion of the Work is required by the Contract Documents to be priced as an Allowance, any amounts remaining in the Allowance which are to be deducted from the Guaranteed Project Cost shall be calculated according to the provisions of **Exhibit "C"** to the Facilities Lease and the Deductive Change Order provisions herein.

18. REQUESTS FOR INFORMATION

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

18.2. The Developer shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Developer, if Developer makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Developer. District, at its sole discretion, shall deduct from and/or invoice Developer for all the professional services arising herein.

18.3. Requests for Information shall comply with all requirements of the Contract Documents.

19. PAYMENTS

19.1. Guaranteed Project Cost

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.

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 (5^{th}) 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. Each Application for Tenant Improvement Payment 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 Tenant Improvement Payment to the Developer, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

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

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 Project Cost and Contract Time;

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

19.2.1.1.9. The percentage of completion of the Developer's Work by line item;

19.2.1.1.10. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

19.2.1.1.11. A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier to be paid from the current progress payment;

19.2.1.1.12. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier that was paid from the progress payment from sixty (60) days prior; and

19.2.1.1.13. A certification by the Developer of the following:

The Developer warrants title to all Work performed as of the date of this payment application. The Developer further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Developer, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.14. If the District has an LCP in force on this Project and if not previously submitted as required herein, all remaining certified payroll record ("CPR(s)") for each

journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment. As indicated herein, if the District has an LCP in force on this Project, the District shall not make any payment to Developer until:

19.2.1.1.14.1. Developer and/or its Subcontractor(s) provide CPRs acceptable to the District, and

19.2.1.1.14.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Developer and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Developer's payment.

19.2.1. Prerequisites for Tenant Improvement Payments

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

19.2.1.1.1. Schedule of unit prices, if applicable;

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

19.2.1.1.3. Copies of authorizations and licenses from governing authorities;

19.2.1.1.4. Initial progress report;

19.2.1.1.5. Surveyor qualifications;

19.2.1.1.6. Written acceptance of District's survey of rough grading, if applicable;

19.2.1.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

19.2.1.1.8. All bonds and insurance endorsements; and

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

19.2.1.2. 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 Tenant Improvement Payment

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

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

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement 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.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for payment of the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.2. The District's review of the Developer's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement 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:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

19.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

19.3.2.4. Specific qualifications expressed by the Architect.

19.3.3. District's approval of the certified Application for Tenant Improvement Payment shall be based on Developer complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

19.3.4. Payments to Developer

Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Developer shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (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 as allowable herein. The value of the Work completed shall be Developer's best estimate. No inaccuracy or error in said estimate shall operate to release the Developer, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.5. 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.

19.3.6. Warranty of Title

19.3.6.1. If a lien or a claim based on a stop notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Developer, Developer and Developer's Surety shall promptly, on demand by District and at Developer's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice to be released or discharged immediately therefrom.

19.3.6.2. If the Developer fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop notice has been so 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 expense incurred or suffered by District from any sum payable to Developer under the Contract.

19.3.7. Decisions to Withhold Payment

19.3.7.1. Reasons to Withhold Payment

The District may withhold payment 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. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

19.3.7.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Developer;

19.3.7.1.2. Stop Notices or other liens served upon the District as a result of the Contract;

19.3.7.1.3. Liquidated damages assessed against the Developer

19.3.7.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;

19.3.7.1.5. Damage to the District or other contractor(s);

19.3.7.1.6. Unsatisfactory prosecution of the Work by the Developer:

19.3.7.1.7. Failure to store and properly secure materials;

19.3.7.1.8. Failure of the Developer to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;

19.3.7.1.9. Failure of the Developer to maintain As-Built Drawings;

19.3.7.1.10. Erroneous estimates by the Developer of the value of the Work performed, or other false statements in an Application for Payment;

19.3.7.1.11. Unauthorized deviations from the Contract Documents;

19.3.7.1.12. Failure of the Developer to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;

19.3.7.1.13. If the District has an LCP in force on this Project, the failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work for the period of the Application for Payment;

19.3.7.1.14. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the District's LCP, if one is in force on this Project;

19.3.7.1.15. Failure to properly maintain or clean up the Site;

19.3.7.1.16. Payments to indemnify, defend, or hold harmless the District;

19.3.7.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;

19.3.7.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;

19.3.7.1.19. Developer is otherwise in breach, default, or in substantial violation of any provision of this Contract.

19.3.7.2. Reallocation of Withheld Amounts. District may, in its reasonable 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 only after providing fourteen (14) days prior written notice to Developer, requesting the Developer provide information in response to same. District shall consider all information provided by Developer in exercising its discretion to pay any such claim or obligation. 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.

19.3.7.3. If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Developer and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost 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 Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.3.8. 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 retention or amounts withheld due to the failure of the Developer to perform in accordance with the terms and conditions of the Contract Documents.

19.4. Subcontractor Payments

19.4.7. Payments to Subcontractors

No later than ten (10) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Developer shall pay to each Subcontractor, out of the amount paid to the Developer on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.4.8. 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.

19.4.9. Joint Checks

Provided Developer is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Developer and Subcontractors and 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, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

20. COMPLETION OF THE WORK

20.1. Completion

20.1.1. District will accept the Project and have the Notice of Completion recorded when Project Completion has been achieved in accordance with the Contract Documents and to the satisfaction of District.

20.1.2. The Project may only be accepted by action of the governing board of the District.

20.1.3. District, at its sole option, may accept the Project and have the Notice of Completion recorded when Project Completion has 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 thirty (30) days after the date of the District's acceptance of the Project, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.4. At the end of the thirty-five (35) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Developer.

20.2. Closeout Procedures

20.2.1. In addition to the closeout procedures indicated herein, Developer shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

20.2.2. Punch List

The Developer shall notify the Architect when Developer considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Developer and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Developer to complete all Work in accordance with the Contract Documents.

20.2.3. Closeout Requirements

20.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.3.2. As-Built Drawings

20.2.3.2.1. Developer shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

20.2.3.2.2. Developer is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Developer shall deliver corrected sepias and diskette/CD/other data storage device acceptable to District with AutoCAD file to the District.

20.2.3.3. Maintenance Manuals: Developer shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

20.2.3.4. Closeout Documentation: Developer shall provide all Closeout Documentation, which shall include the following, without limitation:

20.2.3.4.1. A full set of As-Builts, as further indicated herein
20.2.3.4.2. All Maintenance Manuals, operations manual(s), and related information, as further indicated herein
20.2.3.4.3. All Warranties, as further indicated herein
20.2.3.4.4. Verified report(s) for all scope(s) of work (DSA-6 Verified Report, Rev 04/08, or more recent revision if available)

20.3. Final Inspection

20.3.1. Developer shall comply with Punch List procedures as provided herein and in all the Contract Documents, 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. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in

order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2. Upon Developer's completion of all items on the Punch List and any other uncompleted portions of the Work, the Developer shall notify the District and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify Developer, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3. Final Inspection Requirements

20.3.3.1. Before calling for final inspection, Developer shall determine that the following have been performed:

20.3.3.1.1. The Work has been completed.

20.3.3.1.2. All life safety items are completed and in working order.

20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.

20.3.3.1.5. Painting and special finishes complete.

20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

20.3.3.1.7. Tops and bottoms of doors sealed.

20.3.3.1.8. Floors waxed and polished as specified.

20.3.3.1.9. Broken glass replaced and glass cleaned.

20.3.3.1.10. Grounds cleared of Developer's equipment, raked clean of debris, and trash removed from Site.

20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of 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. Beneficial Occupancy or Use Prior to Project Completion

20.5.1. District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Developer or the Developer's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Developer shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, 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 Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

20.5.2. Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Developer, and the Architect shall jointly inspect the area to be occupied or portion of the Project 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 Project shall not in of itself constitute or acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect will issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Developer in writing of reasons why the Project is not complete. Upon acceptance of the Project (absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Developer shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining ten percent (10%) of the value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

21.2. Prerequisites for Final Tenant Improvement Payment The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

21.2.1. A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Developer, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.

21.2.2. A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier to be paid from the current progress payment;

21.2.3. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier that was paid from the previous progress payment; and

21.2.4. The Developer shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5. Each Subcontractor shall have delivered to the Developer all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6. Developer must have completed all requirements set forth under "Closeout Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7. Architect shall have issued its written approval that final payment can be made.

21.2.8. The Developer shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Developer shall have completed final clean up as provided herein.

21.2.10. After approval by the District of the Architect's Certificate of Payment,

21.2.11. After the satisfaction of the conditions set forth herein, and

21.2.12. After thirty-five (35) days following Project Completion.

21.2.13. No interest shall be paid on any amounts withheld due to a failure of the Developer to perform, in accordance with the terms and conditions of the Contract Documents.

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 replaced at the Developer's expense without change in the Guaranteed Project Cost 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 remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5)

calendar days, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

23.2. Correction of Work

23.2.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Developer shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Developer shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

23.2.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Developer shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

23.3. District's Right to Perform Work

23.3.1. If the Developer should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Developer.

23.3.2. If it is found at any time, before or after Project Completion, that Developer has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

23.3.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Developer at no additional cost to the District;

23.3.2.2. That the District deduct from any amount due Developer the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

23.3.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order or invoice the Developer for the cost of that work. Developer shall pay any invoices

within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

24. TERMINATION AND SUSPENSION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

24.1. Emergency Termination of Public Contracts Act of 1949

24.1.1. In addition to the Parties' right to termination under the Facilities Lease, this Contract 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.

24.1.1.1. Section 4410 of the Government Code states:

> In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

24.1.1.2. Section 4411 of the Government Code states:

> Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

24.1.1.3. Compensation to the Developer shall be determined 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 shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

25. DISPUTES AND CLAIMS

25.1. Performance During Dispute And Claim Resolution Process. The Contractor shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of District to resolve Disputes with the Contractor as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions will be considered a material breach of this Agreement.

25.2. Waiver. If Contractor fails to timely submit the written notices required by the provisions in this Disputes and Claims section, Contractor hereby waives and releases its rights regarding further review of its Dispute or Claim, unless Contractor and District mutually agree in writing to other time limits.

25.3. **Intention.** The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes that are not contemporaneously resolved.

25.4. **Exclusive Remedy**. Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. The Contractor cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process . The District hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

25.5. **Other Provisions.** If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.

25.6. **Subcontractors.** Contractor is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

25.7. **Dispute And Claim Resolution Process**

25.7.1. **Dispute**: A Dispute is a request, demand or assertion by Contractor or by Subcontractor(s) or others who make a demand or request by and through a Subcontractor or Contractor during performance of the Work regarding money and/or time adjustments with which the District does not agree.

25.7.2. **Claim**: A Claim is a Dispute that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

25.7.3. **Dispute Resolution Process (Not for Claims)**

25.7.3.1. **Identifying, Presenting and Documenting a Dispute**

25.7.3.1.1. Every Dispute shall be stated with specificity in writing and signed by Contractor under penalty or perjury and presented to the District within thirty (30) calendar days of the incidents giving rise to the Dispute. The writing shall:

25.7.3.1.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;

25.7.3.1.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

25.7.3.1.1.3. Identify in detail line-item costs if the Dispute seeks money.

25.7.3.1.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

25.7.3.1.3. Architect's Initial Decision. The District's Architect shall issue a written decision regarding the Dispute to the Contractor within ten (10) calendar days of receipt of the written Dispute from the Contractor.

25.7.3.2. Meet and Confer

25.7.3.2.1. Where There Is No Agreement: If there is no agreement between Contractor and the Architect on a Contractor's Dispute, including cases where a Contractor's Proposed Change Order ("PCO") seeks money, time, and/or any other relief, then within ten (10) calendar days of the date stated on the District's written decision of Contractor's Dispute or request for Proposed Change Order, Contractor shall give written notice and demand a review as indicated below, if Contractor ever intends to seek any relief in connection with the District's rejection.

25.7.3.2.2. Where There Is Partial Agreement: If Contractor and the Architect partially agree on a Contractor's Dispute but do not reach complete agreement, then the Architect shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. Contractor shall give written notice and demand for review as indicated below, if Contractor ever intends to seek relief in connection with the portion of the Dispute rejected by the Architect.

25.7.3.3. Contractor's Demand for Review of Dispute

25.7.3.3.1. Contractor shall give in writing a demand for review to the Construction Manager with copy to the Architect, within ten (10) calendar days of receiving the Architect's rejection of Contractor's Dispute. The written demand for review shall include copies of all documentation the Contractor intends to rely upon in substantiating Contractor's position regarding the Dispute, including any supplementary documentation the Contractor deems appropriate for the District's consideration.

25.7.3.3.1.1. Construction Manager's Written Decision. The Construction Manager will review the Dispute and issue a written decision to Contractor and Architect within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The Construction Manager has the option to meet with Contractor, or with Contractor and any other party, before issuing a decision.

25.7.3.3.1.2. If no decision is issued within thirty (30) days after the demand for review, the District will be deemed to have rejected Contractor's Dispute in its entirety, and Contractor shall proceed with the Claim Resolution Process below.

25.7.3.3.1.3. If the Construction Manager's decision completely resolves the Dispute, the District will prepare and process a Change Order, if applicable, or proceed accordingly.

25.7.3.3.1.4. If the Construction Manager rejects the Dispute in whole or in part or does not issue a timely written response, and if Contractor ever intends to seek relief regarding the unresolved issues of the Dispute, then Contractor shall proceed with the Claim Resolution Process below.

25.7.3.3.1.5. Contractor's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from District.

25.7.4. Claim Resolution Process.

25.7.4.1. If a Dispute has not been resolved during the Dispute Resolution Process, the Contractor shall submit within thirty (30) days a Claim along with the required detailed documentation for the District's consideration.

25.7.4.2. The Contractor shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the Contractor's Claim will be based upon District records and the Claim documents furnished by the Contractor.

25.7.4.3. Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

25.7.4.3.1. General Introduction

25.7.4.3.2. General Background Discussion

25.7.4.3.3. Index of Issues (listed numerically)

25.7.4.3.4. For each issue, provide the following information and begin each issue on a new page:

25.7.4.3.4.1. Background

25.7.4.3.4.2. Chronology

25.7.4.3.4.3. Contractor's position including all reason(s) for District's potential liability

25.7.4.3.4.4. Supporting documentation of merit or entitlement

25.7.4.3.4.5. Supporting documentation of damages

25.7.4.3.5. All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

25.7.4.3.6. Productivity exhibits (if appropriate)

25.7.4.3.7. Summary of Damages for each issue

25.7.4.4. Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the Contractor's Claim.

25.7.4.5. Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the Contractor's Claim.

25.7.4.6. Contractor shall include in its Claim documents all issue items and information that Contractor contends are part of its Claim. Issues not included in the Claim documents shall not be considered.

25.7.4.7. Each copy of the Claim documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents.

25.7.4.8. The District may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The District may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

25.7.4.9. **District's Written Decision.** The District Representative will render a written decision to the Contractor relative to the Claim. The District's written decision shall be final and binding on the party(ies) but subject to mediation.

25.7.4.10. **Mediation**. Within thirty (30) days after the District renders its written decision, the Contractor may request that the parties submit the Dispute to mediation. Absent a request for mediation, the District's written decision is final and binding on the parties.

25.7.4.11. **Litigation**. If, after a mediation as indicated above, the parties have not resolved the Dispute, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

25.7.5. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq*., made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq*. Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to $10,000 for each false claim.

25.8. **Documentation Of Resolution.** If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

25.9. **Dispute and Claim Resolution Process – Non-Applicability**. The procedures and provisions in this Disputes and Claims section shall not apply to:

25.9.1. District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

25.9.2. District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107, shall be subject to the mandatory dispute resolution provisions of this Disputes and Claims section and the Contract;

25.9.3. Personal injury, wrongful death or property damage claims;

25.9.4. Latent defect or breach of warranty or guarantee to repair;

25.9.5. Stop notices or stop payment notices;

25.9.6. Any other District rights as set forth herein;

25.9.7. Disputes arising out of or pertaining to an LCP (if applicable);

26. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

26.1. Labor Compliance Program

If the District, the District's designee and/or the California Department of Industrial Relations is operating a labor compliance program ("LCP") on this Project, Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of the LCP, including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate certified payroll records with each application for payment, or the District cannot issue payment. The following provisions indicated herein are specifically understood to be part of the LCP. If there is no LCP on this Project, the Contractor and all of its subcontractor(s) are still required to comply with all applicable provisions of the Labor Code and the obligation to provide certified payroll records as indicated herein.

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 this Contract are on file at the District's principal office and copies will be made available to any interested party on request. Contractor 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. Contractor 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 Contractor or any Subcontractor and such workers.

26.2.4. If during the period this bid is required to remain open, 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 is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

26.2.5. Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars ($200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as 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 Contractor or by any Subcontractor under it.

26.2.5.1. The amount of the penalty shall not be less than forty dollars ($40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

26.2.5.2. The amount of the penalty shall not be less than eighty dollars ($80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

26.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars ($120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

26.2.5.4. 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 Contractor.

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 such minimum wage rate shall be retroactive to time of initial employment of such person in such 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 section 3093, and similar purposes.

26.2.8. Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor 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. <u>Hours of Work</u>

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 days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor 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 Contractor 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. Contractor 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 Contractor in connection with the Work or any part of the Work contemplated by this Contract. 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, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars ($100)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such 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. <u>Payroll Records</u>

26.4.1. If the District, the District's designee and/or the California Department of Industrial Relations has an LCP in force on this Project then, pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that Contractor shall prepare and provide to the District and/or the LCP and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District and/or the LCP an accurate and certified payroll record ("CPR(s)"), 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 Contractor and/or each Subcontractor in connection with the Work.

26.4.1.1. In addition to any other requirements under Labor Code section 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the District on a weekly basis. The CPRs from the Contractor and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District shall not make any payment to Contractor until:

26.4.1.1.1. Contractor and/or its Subcontractor(s) provide CPRs acceptable to the District, and

26.4.1.1.2. The District is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the District in a timely manner will directly delay the District's review and/or audit of the CPRs and Contractor's payment.

26.4.2. Whether or not there is an LCP in force on this Project, all CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor 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 to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

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 either 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 Contractor, 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 Contractor.

26.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 for any work performed by our employees on the Project.

Date: _____ Signature: _____

(Section 16401 of the California Code of Regulations)

26.4.4. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

26.4.5. 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, or Division of Labor Standards Enforcement 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 Contractor awarded Contract or performing Contract shall not be marked or obliterated.

26.4.6. Contractor 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, provide a notice of change of location and address.

26.4.7. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

26.4.8. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

26.5. Apprentices

26.5.1. Contractor acknowledges and agrees that, if this Contract involves 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. It shall be the responsibility of Contractor to

ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

26.5.2. 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.

26.5.3. Every such 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.

26.5.4. 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.

26.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

26.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

26.5.7. If Contractor 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:

26.5.7.1. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

26.5.7.2. Forfeit as a penalty to District the full amount as 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.

26.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

26.5.9. Contractor 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, San Francisco, California 94102.

26.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 3099, et seq.

26.6. <u>Non-Discrimination</u>

26.6.1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of 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 Contractor and Subcontractor.

26.6.2. Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, Contractor 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.

26.7. Labor First Aid

Contractor shall maintain emergency first aid treatment for Contractor's workers 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 (8 Cal. Code of Regs., §1 et seq.).

27. MISCELLANEOUS

27.1. Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

27.1.1. 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 Developer 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. § 15) or under the Cartwright Act (Chapter 2 (commending with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Developer, without further acknowledgment by the Parties.

27.1.2. Section 4552 of the Government Code states:

> 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. § 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.

27.1.3. Section 4553 of the Government Code states:

> 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.

27.1.4. Section 4554 of the Government Code states:

> 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.

27.1.5. Under this Article, "public purchasing body" is District and "bidder" is Developer.

27.2. 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 Project Cost.

27.3. Taxes

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

27.4. Shipments

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Project Cost shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

END OF DOCUMENT