

**BERKELEY UNIFIED SCHOOL DISTRICT
REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P) # 2024-01-01
LEASE-LEASEBACK CONSTRUCTION SERVICES**

Berkeley Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction for the Little Theatre Modernization Project ("Project"), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, is enclosed for your consideration. Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") prior to the submission of the Proposal packet. See **Attachment 2** for the SOQ questionnaire to be filled out and returned to the District prior to January 26, 2024 at 5:00pm. Respondents must mail or deliver two (2) bounded copy, one (1) unbound copy, and one (1) electronic copy on USB flashdrive of the RFP Packet conforming to the requirements of this RFQ/P to:

Berkeley Unified School District
ATTN: John Calise
1005 Parker Street
Berkeley, CA 94710
RE: RFQ/P # 2024-01-01

The District will only receive SOQ packets submitted electronically. **RFQ Packets will be received until 5:00 P.M. on FRIDAY, JANUARY 26, 2023**, only at the following email address: capitalprojects@berkeley.net. Any RFQ packet that is submitted after this time shall be nonresponsive and returned to the bidder. Each respondent is solely responsible for timely submission of its RFQ packet. The District is not responsible for any technological issues in a respondent's ability to timely submit its RFQ packet or portion thereof.

ALL RFP RESPONSES ARE DUE BY 2:00 P.M. ON WEDNESDAY, FEBRUARY 21st, 2024. Oral, telegraphic, facsimile, telephone or email RFP Packets will not be accepted. RFP Packets received after this date and time will not be accepted and returned unopened.

A mandatory information meeting will be conducted on **TUESDAY, JANUARY 23rd, 2024**, at **2:00 P.M.** The meeting will be held at **BERKELEY HIGH SCHOOL, 1980 ALLSTON WAY, BERKELEY, CA.**

Questions regarding this RFQ/P may be directed to Kevin Wagner, capitalprojects@berkeley.net, and must be submitted in writing on or by **5:00 P.M. ON TUESDAY, FEBRUARY 6TH, 2024.**

This Project is subject to labor compliance monitoring and enforcement of compliance with prevailing wage requirements by the Department of Industrial Relations pursuant to Labor Code § 1771.4, and skilled and trained workforce requirement pursuant to Public Contract Code § 2600. Contractors of all tiers must be currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. All Respondents must be prequalified by the District in accordance with Public Contract Code § 20111.6. First tier electrical, mechanical and plumbing subcontractors must be prequalified prior to the time subcontractor bids are submitted.

RFQ/P SCHEDULE SUMMARY

DATE	ACTION ITEM
January 17, 2023	Release and advertisement of RFQ/P.
January 17, 2023	RFQ/P packages available for distribution.
January 23, 2024, @ 2:00 P.M.	Mandatory Informational Meeting and site walk.
January 26, 2024 @ 5:00 P.M.	Statement of Qualifications Due
February 6, 2024 @ 5:00 P.M.	Last day to receive written questions from Respondents.
February 13, 2024	Last day for the District to issue addenda to answer questions/clarifications.
February 21, 2024 @ 2:00 P.M.	Deadline for submissions in response to RFQ/P.
February 23, 2024	Release of shortlist of qualified Respondents and interview notifications.
February 26, 2023	Interviews of qualified Respondents.
<i>Anticipated</i> Second Board meeting of March	Notice to selected developer to commence contract negotiation.

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

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**BERKELEY UNIFIED SCHOOL DISTRICT
REQUEST FOR QUALIFICATIONS AND PROPOSALS
LEASE-LEASEBACK CONSTRUCTION SERVICES**

INTRODUCTION

Berkeley Unified School District (“District”) is responsible for educating more than 9,400 individual students in 11 public elementary schools, 3 middle schools, one comprehensive high school, and an alternative high school. In addition, the district has 3 preschool facilities and an Adult School serving several thousand students each year. The mission of the District is to enable and inspire our diverse student body to achieve academic excellence and make positive contributions to our world.

Berkeley High School is home to two theaters: the 3500 seat BERKELEY COMMUNITY THEATER and the 575 seat FLORENCE SCHWIMLEY LITTLE THEATER. The theaters are maintained and operated by the Berkeley Unified School District and host many events for Berkeley High School and other schools around the District. Construction on the Berkeley Community Theater began in the 1940s, but was suspended for several years during World War II. After a 9 year hiatus, construction resumed and the theater was dedicated June 5th, 1950.

Many original details and features of this World War II era building still exist, and some have been upgraded. More upgrades and modernizations are in store for both spaces, but bringing the theaters’ aging systems up to today’s technological and user standards presents many unique and complex challenges.

Three general obligation bonds – Measure A (1992), Measure AA (2000), Measure I (2010), and Measure G (2020) – have provided the District with a unique opportunity to carefully review its facilities needs and plan for the future.

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

I. PROJECT DESCRIPTION AND SCOPE OF SERVICES

A. General

The purpose of this RFQ/P is to select a qualified person, firm, partnership, corporation, association, or professional organization to provide constructability review, value engineering, master scheduling, cost estimating, budgeting, and construction services for the development and construction for the Little Theatre Modernization Project (“Project”), in accordance with the lease-leaseback structure set forth in Education Code section 17406 et seq. Selected developer shall have experience with the construction of public school facilities, historical buildings and theaters and shall comply with the requirements of the Office of Public School Construction (“OPSC”), the Division of the State Architect (“DSA”), and Title 24 of the California Code of Regulations.

To submit a proposal, Respondents must be properly licensed by the California Contractors State License Board and registered with the Department of Industrial Relations (“DIR”) as required by law. Only Respondents who have been prequalified by the District in accordance with Public Contract Code section 20111.6 are eligible to respond to this RFQ/P.

The selected developer will be required to comply with the the district’s Project Labor Agreement (PLA), prevailing wage requirements, the skilled and trained workforce

requirements, and the District's bonding and insurance requirements. This Project is funded in whole or in part with federal funds, and therefore the selected developer shall comply with the Davis-Bacon Act, applicable reporting requirements such as **APPENDICES C-4 and C-5**, and any other applicable requirements for federal funding. The selected developer shall be required to work cooperatively with District staff, the Governing Board, all other technical consultants, the architect, the project inspector, and any program and/or construction manager, if any, retained by the District for the Project, citizens' oversight committee, other District committees, and the community at large to deliver a timely and professional completion of the Project. The selected developer and its subcontractors shall comply with all applicable federal, state and local laws regarding COVID-19.

The Project is further defined in the attached **APPENDIX A**, along with the District's construction budget and schedule for the Project. Respondents' Proposal shall include Respondent's proposed fees and costs to perform the Project if the Respondent is awarded the contract.

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

B. Scope of Work

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

Preconstruction Services:

1. Review design and support documentation for content, constructability, completeness, scheduling, clarity, consistency, and coordination.
2. Undertake value-engineering analysis and prepare reports with recommendations to District and Architect of Record to maintain established program budget and specifications.
3. Provide detailed cost estimates.
4. Expedite design reviews, including modifications, if any, based on value analysis.
5. Provide a proposed Guaranteed Maximum Price ("GMP") for the construction of the project with identified subcontractor bids and self-performed work.

Construction Services:

1. Construction of the Project.
2. Coordination of record drawings and specifications.
3. Compilation of operations and maintenance manuals, warranties/guarantees, and certificates.
4. Obtaining occupancy permits and coordinating testing, documentation, and governmental inspections and approvals.
5. Preparation of accounting and closeout reports and occupancy plan reports.
6. Other responsibilities as necessary for the completion of the program.

C. Lease-Leaseback Structure

The Project will be funded from various sources, and any agreement reached will conform to the statutory framework for the lease-leaseback delivery method pursuant to Education Code section 17406 et seq. Financing for a portion of the construction of the Project will be included in the Agreement attached to this RFQ/P as **APPENDIX B**. During construction, the District shall pay tenant improvement payments. Once the Project is complete, the developer shall lease the completed facilities back to the District for a predetermined monthly lease payment amount. However, the District intends that the lease will include an early termination payment option for the District.

D. District Project Management Description

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

E. Prequalification of Designated Subcontractors

If used, contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses (collectively, "MEP subcontractors") shall be prequalified by the District to perform construction work as a first-tier subcontractor on the Project pursuant to Public Contract Code section 20111.6.

F. Registration of Respondent and All Tiers of Subcontractors

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

G. Form of Agreement

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

H. Indemnity

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

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I. Insurance

The District requires at least the following insurance coverage from the selected developer:

COMMERCIAL GENERAL LIABILITY	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$5,000,000 per occurrence; \$10,000,000 in aggregate
AUTOMOBILE LIABILITY – ANY AUTO	Combined Single Limit	\$1,000,000
WORKERS' COMPENSATION		Statutory limits pursuant to State law
EMPLOYER'S LIABILITY		\$1,000,000
BUILDER'S RISK (COURSE OF CONSTRUCTION)		Issued for the value and scope of Work.
POLLUTION LIABILITY		\$1,000,000 per claim; \$2,000,000 aggregate

The limits of insurance for those subcontractors whose scope of work does not exceed One million dollars (\$1,000,000) shall not be less than the following amounts:

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

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

II. FULL OPPORTUNITY

No respondent will be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in any consideration leading to the award of the contract. The District also affirmatively ensures that Disadvantaged Business Enterprises ("DBE"), Small Local Business Enterprises ("SLBE"), Small Emerging Local Business

Enterprises ("SELBE"), and Disabled Veterans Business Enterprises ("DVBE") shall be afforded full opportunity to respond to this RFQ/P.

III. LIMITATIONS

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

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

RFQ/P Packets and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ/P Packets shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ/P Packet.

IV. RESTRICTIONS ON LOBBYING AND CONTACTS

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

V. MANDATORY INFORMATIONAL MEETING AND SITE WALK

Respondents must attend the mandatory informational meeting and site walk, to be conducted on **MONDAY, JANUARY 23, 2024, at 2:00 P.M.** The meeting will be held at **BERKELEY HIGH SCHOOL, 1980 ALLSTON WAY, BERKELEY, CA.** At this mandatory meeting, District representatives may distribute information and materials to further describe the Project, the scope of work, and walk the proposed Project site. Respondents shall consider and address the materials and information distributed at the meeting in their RFQ/P Packets. Respondents that fail to attend the mandatory informational meeting and site walk in its entirety, shall be ineligible for responding to this RFQ/P.

VI. SUBMITTAL FORMAT

A. Format

Material must be in 8½ x 11-inch format with font no less than 11-point font size. The RFQ/P Packets shall include divider tabs labeled with boldface headers below (e.g. the first tab would be entitled "Executive Summary," the second tab would be entitled "Table of Contents," etc.) Two (2) bound copy, one (1) unbound copy, and one (1) electronic copy of the RFQ/P Packet shall be submitted. Each submittal shall not contain more than thirty (30) single-sided pages, and excluding front and back covers, tabs, certificates of insurance, detailed schedule charts, and Comments to the Form of Agreement (Tab 11). Any double-sided page is counted as two single-sided pages. Submittals containing more than the authorized number of pages will not be considered.

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

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

B. General Overview

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

C. Contents

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

TAB 1 – Executive Summary (max. 1 page)

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

TAB 2 – Table of Contents

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

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

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

- a. Respondent's name.
- b. Address, include any branch office address and point of contact.
- c. Telephone number.
- d. Facsimile number.
- e. E-Mail address.
- f. Identify the project team.
- g. Clearly identify the individual(s) who are authorized to speak for the Respondent during the evaluation process.
- h. And, the following statement:

"[RESPONDENT'S NAME] received a copy of the District's Site Lease and Facilities Lease ("Agreement") attached as Appendix B to the RFQ/P. [RESPONDENT'S NAME] has reviewed the indemnity provisions and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

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

TAB 4 - Respondent Information

- a. A brief history of the Respondent. Please include any former names of the Respondent and the number of years the Respondent has participated in construction as a general contractor under each name. List any reasons for change or name or corporate structure.
- b. Organizational chart for Respondent. This shall include the names of all key personnel, joint venture partners, and sub-consultants with their titles and specific task assignments for the Project. Resumes of personnel to be involved with the Project should be included, including their school construction experience. The District's evaluation will consider the entire team. Therefore, no changes in the Respondent's composition will be allowed without prior written approval by the District.

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

- c. Description of Respondent's technical competence, including a description of in-house resources (e.g. computer capabilities, software applications, modeling programs, etc.), and Respondent's ability to draw upon multi-disciplinary staff to address the services required under the RFQ/P.
- d. Provide the volume of construction in dollars for each of the past three (3) years.
- e. Provide a statement regarding the Respondent's availability and resources.
- f. Provide a statement on financial resources, bonding capacity and insurance coverage.
- g. Provide a claims statement *for all resolved or ongoing claims*: Submit a statement indicating any and all suits or claims in which the Respondent or its personnel instigated a claim and/or litigation regarding construction projects within the past five (5) years, and indicating any and all claims in which claims and/or litigation have been pursued against the Respondent or its personnel. For each listed claim and/or litigation: state the issues in the claim and/or litigation, the status of the claim/litigation, the names of the parties involved, and the outcome, if any.

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

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

- h. Contractor license number and whether license has been revoked or suspended in the last five (5) years. Respondent must hold a General Building Contractor License (B License), which is current, valid and in good standing with the Contractors State License Board. Provide the following for each license:
 - i. Exact name of license holder on file.
 - ii. License Classification.
 - iii. License Number.
 - iv. Date Issued.
 - v. Expiration Date.
 - vi. Whether license has been suspended or revoked in the past five (5) years. If so, explain.
- i. Provide signatory status.
- j. Location of nearest local office and main office, if different.
- k. Certificate(s) of Insurance identifying the firm's current insurance coverages.
- l. Provide Non-Collusion Declaration. (**APPENDIX C-1.**)
- m. Provide Iran Contracting Act Certification. (**APPENDIX C-2.**)

TAB 5 – Methods and Strategic Plan

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

- n. The technical and managerial approach to the Respondent’s partnership with the District. Take into account the District’s goals for the Project and the general functions required. Respondent may identify additional necessary tasks and discuss these in its proposed method to accomplish the work.
- b. How Respondent plans to incorporate a skilled and trained workforce into the Project.
- c. How Respondent plans to incorporate local subcontracting teams into the Project.
- d. How Respondent plans to incorporate construction means and methods into the Project.
- e. Proposed cost for completing preconstruction services for the Project for which the Proposal is being submitted.
- f. Detailed discussion of costs related to fees, general conditions, insurance, supervision, and management of the construction portion of the scope of work.

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

TAB 6 – Prior Relevant Experience

Description of the Respondent’s experience with respect to the areas of public schools or similar construction over the past five (5) years. Specifically, please provide a list of completed or ongoing projects the Respondent has been involved with for the past five (5) years where the total project contracts exceeded fifty million dollars (\$50,000,000) per project. Within that list:

- a. Identify the method (e.g. lease-leaseback, bid-build, etc.) by which each project was constructed. For lease-leaseback projects, include the total cost of each project and a breakdown of the total cost by preconstruction services and construction services.
- b. Include a discussion of Respondent’s experience with working with the DSA on public school projects.
- c. Identify and include discussion of Respondent’s experience with projects performed in an occupied building and/or immediately adjacent to an occupied building and/or campus.
- d. Identify whether the project is completed or ongoing.
- e. Identify if any of the projects had phased completion.

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

- a. Project's name and description;
- b. Firm's role;
- c. Award and completion dates;
- d. Project's initial contract price and final contract price;
- e. Amount of fees received;
- f. Staffing, including Respondent's team members, subcontractors and consultants;
- g. Relationship with owner/client;
- h. References: Provide a contact name, telephone number and email address for the owner; and
- i. Discussion of claims, demands, and/or litigation arising from the project and involving the Respondent, and resolution of the same.
- j. Include examples of other similar project assignments on the part of the Respondent.

TAB 7 – Contracting History

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

- a. Failure to enter into a contract or professional services agreement once selected.
- b. Withdrawal of a proposal or bid as a result of an error.
- c. Termination or failure to complete a contract.
- d. Debarment by any municipal, county, state, federal, or local agency.
- e. Involvement in litigation, arbitration, or mediation, whether concluded or ongoing.
- f. Conviction of the Respondent or its principals for violating any state or federal antitrust laws by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of any other federal or state law related to bidding or performance of services.
- g. Knowing concealment of any deficiency in the performance of a prior contract.
- h. Falsification of information or submission of deceptive or fraudulent statements in connection with a contract.
- i. Willful disregard for applicable rules, laws, or regulations.
- j. Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. Information regarding any of the above may be considered in determining the suitability of Respondent to perform the needed services. Accordingly, Respondent may describe mitigating factors as part of description of any of the above.

TAB 8 – Pricing and Contingency

The pricing will be evaluated based on the: (1) preconstruction services cost or method of calculation; (2) Respondent's fee (3) general conditions cost; (4) construction contingency to be applied to errors and omissions; (5) construction contingency to be applied to errors and omissions; (6) bonds and insurance percentage; (7) all other costs; and (8) allowances if any. Include your fee calculations on **Attachment 1 - Bid Form**

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

TAB 9 – Insurance

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

TAB 10 – Assurances

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

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

- **Site Evaluation:** Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed to review the current site conditions. During this evaluation, the selected developer should make any recommendations that could minimize unforeseen conditions.
- **Plan Review:** Provide plan review and constructability services. Refer to the Facilities Lease for the required scope. Place an emphasis on ensuring that the Project can be completed within the established schedule and within the available budget. During the review, the selected developer shall review the documents for clarity, consistency, constructability and coordination. The results of the review shall be provided in writing and as notations on the documents to the District. The selected developer shall also make recommendations to the District with respect to constructability, construction cost, sequence of construction, and construction duration.
- **Pre-construction Meetings:** Attend meetings at the Project site with the architect of record and the District every two (2) weeks, until the Notice to

Proceed with Construction is issued (meeting duration is approximately 2 hours).

- **Value Engineering:** Provide a detailed analysis of all major Project systems with an emphasis on possible value engineering possibilities.
- **Detailed Construction Critical Path Schedule:** Produce detailed construction critical path schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.
- **Preliminary and Detailed Estimates:** Provide preliminary construction estimates using like-kind construction costs. Upon receipt of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.
- **Construction Planning:** Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.
- **Other services:** Any other services that are reasonable and necessary to control the budget and schedule.

Construction Services:

- **Project Accounting and Management Systems:** In coordination with District staff, develop the Project accounting and budget management systems. A process of up-to-date costs management will be necessary. During construction, monthly reporting will be required.
- **General Conditions:** List what is included in the Respondent's general conditions (including full-time and part-time personnel) and a monthly value of the general conditions. Indicate what would be included as a cost of work versus a line item in the general conditions. See **APPENDIX C-3** for an example.
- **Management of Project:** Administer and coordinate on a daily basis the work of all trade contractors the successful Respondent hires to work on the Project. Enforce strict performance, scheduling, and notice requirements. Document the progress and costs of the Project. Report proactively on potential schedule impacts. Recommend potential solutions to schedule problems.
- **Trade Contractors:** Pursuant to Public Contract Code section 20111.6, each prospective MEP Contractor holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46 licenses shall be prequalified by the District to perform construction work as a first-tier subcontractor on the Project.

TAB 11 – Comments to Form of Agreement

Respondents must thoroughly review the Agreement attached to this RFQ/P as **Appendix B** and confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District's standard agreement. Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, deleting, or adding. Respondents must set forth a clear explanation of what modification would be sought and specific alternate language. Comments on the form of Agreement will be excluded from the page count. ***If selected, Respondent will be***

precluded from negotiating changes that have not been identified in its RFQ/P Packet. The District will review, but is not obligated to accept, any proposed changes.

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VII. SELECTION CRITERIA

A. Best Value Evaluation

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

CRITERIA ITEM	DESCRIPTION	MAXIMUM POINTS
Conflict of Interest	Is there a conflict of interest?	PASS / FAIL
Safety	Safety record	PASS / FAIL
Form of Agreement	Agreement to use District Form of Agreement	PASS / FAIL
Technical Expertise	Relevant experience with like-projects including prior lease-leaseback experience, historical building experience, theater experience, value-engineering experience, constructability experience and references	26 points
Interview (If used, score; if not used, all respondents receive 0 points.)	Proposed team attendance, performance, approach to work	22 points
Price Points	All aspects for Respondent’s fee proposal	22 points
Staffing	Management and staffing approach, including skilled and trained workforce	16 points
Schedule/Liquidated Damages	History of meeting project schedules and completion dates	7 points
Claims/Litigation	Acceptable history of claims and litigation	7 points
TOTAL: MAXIMUM 100 POINTS		

Based on these criteria, District staff assign points to each proposer and then calculate the total points awarded to the proposer. The more points, the higher the proposer is ranked. The highest ranked proposer reflects the best combination of price and qualifications for the Project.

B. District Investigations

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

C. Interviews

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

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

D. Selection Process

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

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

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

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

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

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

E. Final Determination and Award

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

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

VIII. SUBMISSION GUIDELINES

Respondents to this RFQ/P should mail or deliver 2 (2) bound copies, one (1) unbound copy, and one (1) electronic copy on a USB flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

Berkeley Unified School District
ATTN: John Calise
1005 Parker Street
Berkeley, CA 94710
RE: RFQ/P #2024-01-01

ALL RFP RESPONSES ARE DUE BY 2:00 P.M. ON TUESDAY, FEBRUARY 6TH, 2024.

Oral, telegraphic, facsimile, telephone or email RFP Packets will not be accepted. RFP Packets received after this date and time will not be accepted and returned unopened

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

The District hereby notifies all Respondents that it will affirmatively insure that, in any contract entered into pursuant to this advertisement, no respondent will be discriminated against on the grounds of race, color, sex, age, ancestry, religion, marital status, national origin, medical condition or physical disability on consideration for the award.

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

ATTACHMENT 1 – FEE SCHEDULE AND GENERAL CONDITIONS

Fees	Fee Percentage (Fee as a % of Direct Construction Cost Budget)	Fee in Dollars (Fee % multiplied by Direct Construction Cost Budget)
Preconstruction Services Parties will negotiate and agree upon applicable hourly rates and a not-to-exceed amount for preconstruction services based on the estimated project cost and the Firm's proposed fee for preconstruction services.		
Construction Phase - Management Fee LLB's Site Management Fee		
Construction Phase - General Conditions LLB's General Conditions and general requirements, including but not limited to temporary facilities, utilities, structures, fences, dust control, wayfinding, scheduling, noise control, environmental related matters, emergency evacuation routes, security, safety, traffic control, scaffolding, and SWPPP.		
Construction Phase - Overhead and Profit LLB's Overhead & Profit - supervision of subcontractors and other management responsibilities, and employees/labor (including but not limited to wages, salaries, benefits) for any work performed by the Contractor.		
Construction Phase - Construction Contingency LLB's contingency for the construction phase to be applied to errors and omissions.		
Bonds and Insurance Including but not limited to payment and performance bonds.		
All Other Costs All other costs incurred in performance of Contractor's obligations under the terms of the LLB Contract Documents, including but not limited to the Site Lease and Facilities Lease.		
Total LLB Fees		

The pricing will be evaluated based on the: (1) preconstruction services cost or method of calculation; (2) Respondent's fee (3) general conditions cost; (4) construction contingency to be applied to errors and omissions; (5) construction contingency to be applied to errors and omissions; (6) bonds and insurance percentage; (7) all other costs; and (8) allowances if any.

Attachment #2

**BERKELEY UNIFIED SCHOOL DISTRICT
PREQUALIFICATION TEMPLATE
LEASE-LEASEBACK ENTITIES**

This standard prequalification template should be completed by lease-leaseback entities or lease-leaseback teams seeking to prequalify for a Berkeley Unified School District ("District") Lease-leaseback project in accordance with Education Code section 17250.10 et seq.

As used in here:

- "DBE" refers both design-build entities and design-build teams.
- "Member" refers to individuals or entities identified as members of the design-build team, including the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.
- "Associates" refers to all current officers, owners, and/or partners of DBE and of any Member.

Wherever additional space is needed to answer a question fully and accurately, attach additional copies of the template pages and/or additional signed sheets as needed.

I. BUSINESS INFORMATION

A. Contact Information

1. DBE Name: _____
2. Primary contact Person: _____
3. Principal office address: _____
4. Phone: _____
5. Fax: _____
6. Email: _____

B. Form of Organization

1. If the DBE or any Member is a **corporation**:
 - a. Date incorporated: _____
 - b. Under laws of what state: _____

Attachment #2

- c. If a privately held corporation, list all shareholders who will perform work on the project:

Name	Ownership Percentage

- d. Attach a copy of the articles of incorporation.

2. If the DBE or any Member is a **limited liability company**:

- a. Date formed: _____
- b. Under laws of what state: _____
- c. List all LLC members who will perform work on the project:

Name	Ownership Percentage

- d. Attach a copy of the articles of organization.

3. If the DBE or any Member is a **partnership**:

- a. Date formed: _____
- b. Under laws of what state: _____
- c. List all partners who will perform work on the project:

Name	Ownership Percentage
------	----------------------

Attachment #2

d. Attach a copy of the partnership agreement.

4. If the DBE or any Member is a **joint venture**:

a. Date formed: _____

b. Under laws of what state: _____

c. List all joint venture members who will perform work on the project:

Name	Ownership Percentage

d. Attach a copy of the joint venture agreement.

5. If the DBE or any Member is a **sole proprietorship**:

a. Date formed: _____

b. Under laws of what state: _____

c. List _____ owner:

d. Attach a copy of organizational documents, if any.

C. Financial Capacity

1. Attach an audited financial statement with accompanying notes and supplemental information for the past 2 full fiscal years for DBE and each entity Member (not individual Members). A letter verifying availability of a line of credit may also be

Attachment #2

attached; however, it will be considered supplemental information only, and is not a substitute for the required financial statement.

- 2. Is DBE or any Member currently, or has DBE or any Member within the last 5 years been, the debtor in a bankruptcy case?

___ Yes ___ No

If "yes," please attach a copy of the bankruptcy petition and a copy of the bankruptcy court's discharge or any other document that ended the case, if any.

II. LICENSING AND REGISTRATION

A. General Contractor

- 1. Name of license holder exactly as on file with the Contractors State License Board ("CSLB"): _____
- 2. License classification(s): _____
- 3. License #: _____
- 4. Issue Date: _____
- 5. Expiration Date: _____
- 6. Public Works Contractor Registration # on file with the Department of Industrial Relations ("DIR"): _____
- 7. Has any CSLB license held by the general contractor or its qualifying individual been suspended or revoked within the last 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

- 8. Has the general contractor changed names or license numbers within the past 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

B. Architect of Record

The architect of record is the architect whose stamp will appear on project documents.

- 1. Name of license holder exactly as on file with the California Architects Board ("CAB"): _____
- 2. License #: _____
- 3. Issue Date: _____

Attachment #2

4. Expiration Date: _____

5. Has any CAB license held by the architect of record been suspended or revoked within the last 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

6. Has the architect of record changed names or license numbers within the past 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

C. Engineer(s)

Engineering services will be dictated by the nature of the project. The DBE should respond for all "in house" engineers that will provide services on the project. If relevant, use additional signed sheets to respond for multiple engineering disciplines.

1. Name of license holder exactly as on file with the Board of Professional Engineers, Land Surveyors, and Geologists ("BPELSG"):

2. License Type: _____

3. Licenses #: _____

4. Issue Date: _____

5. Has any BPELSG license held by the engineer been suspended or revoked within the last 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

6. Has the engineer changed names or license numbers within the past 5 years?

___ Yes ___ No

If "yes," explain on a separate signed sheet.

D. Mechanical, Electrical, or Plumbing Contractor(s)

If utilized in the design of the project, respond for all Member electrical, or plumbing ("MEP") contractors. If relevant, use additional signed sheets to respond for multiple MEP contractors.

1. Name of license holder exactly as on file with the Contractors State License Board ("CSLB"):

Attachment #2

- 2. License classification(s): _____
- 3. License #: _____
- 4. Issue Date: _____
- 5. Expiration Date: _____
- 6. Public Works Contractor Registration # on file with the Department of Industrial Relations ("DIR"): _____
- 7. Has any CSLB license held by the MEP contractor or its qualifying individual been suspended or revoked within the last 5 years?
 Yes No
If "yes," explain on a separate signed sheet.
- 8. Has the general contractor changed names or license numbers within the past 5 years?
 Yes No
If "yes," explain on a separate signed sheet.

III. PERFORMANCE HISTORY

- 1. Has DBE or any Member or Associate ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?
 Yes No
If "yes," explain on a separate signed sheet, including identifying who was found liable or guilty, the court and case number, the name of the public entity, the civil or criminal verdict, the date, and the basis for the finding.
- 2. Has DBE or any Member or Associate ever been convicted of a crime involving any federal, state, or local law related to construction or any crime involving fraud, theft, or any other act of dishonesty?
 Yes No
If "yes," explain on a separate signed sheet, including identifying who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.
- 3. At any time in the last 5 years, has DBE or any Member been assessed liquidated damages under a construction contract?
 Yes No

Attachment #2

If "yes," explain on a separate signed sheet, including the project, owner, owner's address, date of completion, and amount of liquidated damages.

4. At any time in the last 5 years, has DBE or any Member or Associate been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any public works project?

Yes No

If "yes," explain on a separate signed sheet, including the project, the year of the event, owner, owner's address, and basis for the action.

5. At any time in the last 5 years, has a public agency found that DBE or any Member was not a responsible bidder?

Yes No

If "yes," explain on a separate signed sheet, including the project, the year of the event, owner, owner's address, and basis for the finding.

6. In the past 5 years, has any claim exceeding \$50,000 been filed by or against DBE or any Member in court or arbitration concerning work or payment on a construction project?

Yes No

If "yes," explain on a separate signed sheet, including the project name, court or arbitration case name and number, and a brief description of the status of the claim.

7. In the past 5 years, has there been more than one occasion in which DBE or any DBE member was required to pay either back wages or penalties for failure to comply with California prevailing wage laws or federal Davis-Bacon prevailing wage requirements?

Yes No

If "yes," explain on a separate signed sheet, describing the nature of the violation(s), project, owner, and amount paid, if any.

8. At any time during the past 5 years, has DBE or any Member been found to have violated any provision of California apprenticeship laws or regulations, or laws pertaining to use of apprentices on public works projects?

Yes No

If "yes," explain on a separate signed sheet, including date(s) of such findings and attaching the DAS' final decision(s).

Attachment #2

IV. BONDS AND INSURANCE

A. Bonds

1. Attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California), which states the current bonding capacity of the DBE (both single job limit and aggregate limit). Note: DBE must have capacity to provide 100% payment bond and 100% performance bond, each issued by an admitted surety insurer, without bonding subcontractors.

2. Provide the name, address, and telephone number of the surety agent: _____

3. List all sureties that have written bonds to the DBE or any Member during the last 5 years:

Name	Address	Date of Bond

4. In the last 5 years, has any surety paid on behalf of the DBE or any Member a result of a default to satisfy any claims made against a payment or performance bond?

___ Yes ___ No

If "yes," explain on a separate signed sheet, including the amount of each claim, name and telephone number of claimant, date of and grounds for the claim, and present status.

5. If DBE or any Member was required to pay a premium of more than 1 percent for a performance and payment bond on any project in the last 5 years, state the percentage: _____

Explain on a separate signed sheet why DBE or Member was required to pay the premium of more than 1 percent.

6. In the last 5 years, has DBE or any Member been denied bond coverage by a surety company or had no surety bond in place when once was required?

___ Yes ___ No

Attachment #2

If "yes," explain on a separate signed sheet, including the name of the surety company and/or period during which DBE or Member had no bond in place.

B. Insurance

- 1. Does DBE have liability insurance with a policy limit of at least \$5,000,000 per occurrence and \$10,000,000 aggregate for a California admitted company?

Yes No

If "no," provide on a separate signed sheet what policy limits are available to DBE.

- 2. Does DBE have current workers' compensation insurance as required by the California Labor Code or is DBE legally self-insured pursuant the California Labor Code?
- 3. In the last 5 years, has any insurance carrier, for any form of insurance, refused to renew an insurance policy for DBE or any Member?

Yes No

If "yes," explain on a separate signed sheet, including the name of the insurance carrier, form of insurance, and year of the refusal.

V. SAFETY

- 1. Attach a description, not to exceed 1 page, of DBE's worker safety program as applicable to this project.
- 2. Within the past 5 years, has the California or federal Occupation Safety and Health Administration ("OSHA") cited and assessed penalties against DBE or any Member, for "serious," "willful" or "repeat" violations of its safety or health regulations?

Yes No

If "yes," explain on a separate signed sheet, identifying the citation(s), nature of the violation(s), project, and amount of penalty paid, if any.

- 3. Within the past 5 years, has the Environmental Protection Agency ("EPA") or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against DBE or any Member or the owner of the project on which DBE/Member was the contractor?

Yes No

If "yes," explain on a separate signed sheet, identifying the citation(s), nature of the violation(s), project, and amount of penalty paid, if any.

- 4. State the Workers' Compensation Experience Modification Rate ("EMR") for DBE and each Member for the past 3 premium years:

Year	EMR
------	-----

Attachment #2

If EMR was 1.00 or higher in any of 3 years, attach a letter of explanation.

5. State the total recordable injury or illness rate and the lost work rate for DBE and each Member for the past 3 years:

Year	Incident Rate	Lost Work Rate

6. Within the past 5 years, has there ever been a period when DBE or any Member had employees but was without workers' compensation insurance or state-approved self-insurance?

___ Yes ___ No

If "yes," explain on separate signed sheet, including the date(s) and reason(s) for the absence of workers' compensation insurance.

VI. PROJECT EXPERIENCE AND REFERENCES

1. How many design-build projects have the general contractor and architect of record involved in this DBE completed together? _____
2. For the completed design-build projects identified in the preceding answer, state:
 - a. Total dollar value of all contracts: _____
 - b. Dollar value of single largest contract: _____
3. How many California K-12 public school construction projects (both under construction and completed) has/have:
 - a. The general contractor for the DBE built in the past 5 years? _____
 - b. The architect of record for the DBE designed in the past 5 years? _____
 - c. The engineer(s) for the DBE designed in the past 5 years? _____
 - d. The MEP contractor(s) for the DBE worked on in the past 5 years? _____

Attachment #2

4. Complete **both** project reference forms attached hereto as **Exhibits A-1 and A-2**. District may, in its discretion, contact project references.
5. Attach resumes or similar documents, not to exceed 1 page each, showing the experience, training, and qualifications for up to 6 proposed key personnel of the DBE.

VII. SKILLED AND TRAINED WORKFORCE COMPLIANCE

1. By this submittal, DBE hereby acknowledges, agrees, and hereby provides an enforceable commitment to District that:
 - a. DBE and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code section 2600 et seq.; or
 - b. DBE has agreed to be bound by: (i) a project labor agreement ("PLA") entered into by the District that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce; (ii) the extension or renewal of a PLA that was entered into by the District prior to January 1, 2017; or (iii) a PLA entered into by the DBE that will bind the DBE and all its subcontractors at every tier performing work on the project to use a skilled and trained workforce.

[CERTIFICATION ON NEXT PAGE]

Attachment #2

VIII. CERTIFICATION

DBE and all Members must sign. Copy this certification page as needed for each Member.

I certify and declare that I have read all the foregoing answers to this prequalification template; that all answers are correct and complete of my own knowledge and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____, 20__

Name of DBE or Member: _____

Signature by authorized individual: _____

Print Name: _____

Title: _____

Attachment #2

EXHIBIT A-1

Lease-leaseback Project References

List the three most recent Lease-leaseback projects, each with a contract price over \$30 million, completed by the general contractor for the DBE. The projects may be public or private. Contact information must be current and viable. (Copy additional sheets.)

1. Project Name: _____

2. Project Address: _____

3. Owner (name and tel. #): _____

4. Architect (name and tel. #): _____

5. Construction Manager (name and tel. #): _____

6. Scope of Work: _____

7. Original Completion Date: _____

8. Actual Complete Date: _____

9. Time Extensions Granted (# of days): _____

10. Initial Contract Value: _____

11. Final Contract Value: _____

Date: _____, 20__

Signature by authorized individual: _____

Print Name: _____

Title: _____

Attachment #2

EXHIBIT A-2

CA K-12 Public School Project References

List the three most recent California K-12 public school construction projects, each with a contract price over \$10 million, completed by the general contractor for the DBE. Contact information should be current and viable. (Copy additional sheets.)

1. Project Name: _____
2. Project Address: _____

3. Owner (name and tel. #): _____

4. Architect (name and tel. #): _____

5. Construction Manager (name and tel. #): _____

6. Scope of Work: _____

7. Was this a design-build project? _____
8. Original Completion Date: _____
9. Actual Complete Date: _____
10. Time Extensions Granted (# of days): _____
11. Initial Contract Value: _____
12. Final Contract Value: _____

Date: _____, 20__

Signature by authorized individual: _____

Print Name: _____

Title: _____

APPENDIX A Project Description

Project Name: **Little Theater Modernization Project**

The project will be submitted to DSA in two separate increments. See Schematic Design documents for a more detailed description of the scope. The basic scope for each increment is shown below:

INCREMENT 1: Hazardous materials abatement and soft demolition.

INCREMENT 2: Renovation of the main auditorium of the Little Theater and seismic upgrades to the Community Theater including but not limited to the following:

Little Theater

- Building addition including an audience lobby
- Accessible seating upgrades
- New production rigging
- New performance support spaces
- Seismic Upgrades
- MEPF System Upgrades
- Finishes
- Elevator

Community Theater

- Accessible Seating Modifications
- New lift to access the balcony
- Technical production upgrade
- Seismic Upgrades
- MEPF System Upgrades
- Selective Finishes

Completion Date: August 1, 2026

Project Estimate: \$70,000,000

Design Team:

Architect: CAW Architects

Structural Engineer: Mar Structural Design

MEPF Engineer: Cammisa + Wipf

Theater Consultant: The Shalleck Collaborative

Civil Engineer: Luk & Associates

Landscape Architect: Carducci & Associates

Acoustical Consultant: Charles M. Salter Associates

APPENDIX B
Form of Agreement

See Attached:

1. Site Lease
2. Facilities Lease
3. LLB Contract Documents

SITE LEASE

For all or a portion of the following Site:

[Name of] Project
[Address]
APN: _____

By and between

Berkeley Unified School District
1005 Parker Street
Berkeley, CA 94710

And

[Developer]
[Address]

Dated as of _____, 20__

SITE LEASE

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

RECITALS

WHEREAS, the District currently owns a parcel of land located at [Address], known as [Name of] School, as more particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by this reference ("Site"); and

WHEREAS, the District desires to provide for the development and construction of certain work to be performed on portions of the Site, including construction of improvements to be known as the [Name of] Project ("Project"); and

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

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

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

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

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

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

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with

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

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

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

TERMS

1. Definitions

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

2. Exhibits

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

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

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

3. Lease of the Site

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

4. Leaseback of the Project and Site

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

5. Term

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

6. Payment

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

7. Termination

7.1. Termination Upon Purchase of Project

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

7.2. Termination Due to Default by Developer

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

7.3. Termination Due to Default by District

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

7.3.1. Take possession of the Site.

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

7.3.3. Re-let the Site; and

7.3.4. Stop all Work associated with the Site Lease.

8. Title to Site

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

9. Improvements

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

10. No Merger

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

11. Right of Entry

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

12. Quiet Enjoyment

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

13. Waste

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

14. Further Assurances and Corrective Instruments

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

15. Representations of the District

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

15.1. Due Organization and Existence

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

15.2. Authorization

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

15.3. No Violations

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

15.4. CEQA Compliance

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

15.5. Condemnation Proceedings

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

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

15.6. Use and Zoning

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

15.7. Taxes

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

16. Representations of the Developer

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

16.1. Due Organization and Existence

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

16.2. Authorization

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

16.3. No Violations

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

16.4. No Bankruptcy

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

16.5. No Litigation

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

17. Insurance and Indemnity

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

18. Assignment and Subleasing

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

19. Restrictions on District

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

20. Liens and Further Encumbrances

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

21. Notices

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

If to District:

Berkeley Unified School District
1005 Parker Street
Berkeley, CA 94710
ATTN: [Name, Title]

With a copy to:

Dannis Woliver Kelley
750 B Street, Suite 2600
San Diego, CA 92101
ATTN: [Name]

If to Developer:

[Developer]
[Address]
[City], [State] [Zip Code]
Attn: [Name, Title]

With a copy to:

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

22. Binding Effect

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

23. No Additional Waiver Implied by One Waiver

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

24. Severability

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

25. Amendments, Changes and Modifications

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

26. Obligations Absolute

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

27. Execution in Counterparts

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

28. Developer and District Representatives

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

29. Applicable Law

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

30. Attorney's Fees

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

31. Captions

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

32. Prior Agreements

This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this

Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

33. Further Assurances

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

34. Recitals Incorporated

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

35. Time of the Essence

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

36. Interpretation

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__

Dated: _____, 20__

Berkeley Unified School District

[Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

[Name of] Project

[Address]

APN: _____

<INSERT>

EXHIBIT B

DESCRIPTION OF PROJECT

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

<INSERT>

FACILITIES LEASE

For all or a portion of the following Site:

[Name of] Project
[Address]
APN: _____

By and between

Berkeley Unified School District
15 Parker Street
Berkeley, CA 94710

And

[Developer]
[Address]

Dated as of _____, 20__

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Exhibits A - H

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of _____, 20__ ("Effective Date"), is made and entered into by and between [Name of Developer] ("Developer"), a [California corporation] duly organized and existing under the laws of the State of [California], as sublessor, and Berkeley Unified School District, a school district duly organized and validly existing under the laws of the State of California, as sublessee ("District") (together, the "Parties").

RECITALS

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

WHEREAS, on the date hereof, the District has leased to Developer, a parcel of land located at [Address], known as [Name of] School, particularly described in **Exhibit A** and shown on **Exhibit B** attached hereto and incorporated herein by reference ("Site"); and

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

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

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

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

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

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

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

WHEREAS, Developer has reviewed the Lease Documents; and

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

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

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

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

TERMS

1. Definitions

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

1.1 "Developer" or "Lessor" means _____, a [California corporation], organized and existing under the laws of the State of [California], Contractor's license number _____ issued by the State of California, Contractors' State License Board, in accordance with division 3, chapter 9, of the Business and Professions Code, and its successors and assigns.

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

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

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

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

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

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

1.6.2 The Site Lease.

1.6.3 This Facilities Lease.

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

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

2. Exhibits

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

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

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

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

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

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

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

2.7 Exhibit F - Construction Schedule

2.8 Exhibit G - Schedule of Values

2.9 Exhibit H - Project Labor Agreement

3. Lease of Project and Site

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

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

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

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

4. Term

4.1 Facilities Lease is Legally Binding

This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board's approval of this Facilities Lease. The "Term" of this Facilities Lease for the purposes of District's obligation to make Lease Payments shall commence on the date when Developer delivers possession of the Project to District and when all improvements to be provided by Developer are determined by the District to be completed as set forth in **Exhibit D** to this Facilities Lease.

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

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

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

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

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

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

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

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

5. Payment

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

6. Title

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

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

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

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

7. Quiet Enjoyment

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

8. Representations of the District

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

8.1 Due Organization and Existence

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

8.2 Authorization

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

8.3 No Violations

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

8.4 Condemnation Proceedings

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

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

9. Representations of Developer

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

9.1 Due Organization and Existence

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

9.2 Authorization

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

9.3 No Violations

Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the

consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Developer is now a party or by which Developer is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Developer, or upon the Site, except Permitted Encumbrances.

9.4 No Bankruptcy

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

9.5 No Encumbrances

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

9.6 Continued Existence

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

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

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

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

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

10. Preconstruction Services

10.1 Scope of the Preconstruction Services

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

10.1.1 General Services

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

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

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

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

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

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

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

10.1.1.7 Architect shall act as lead and Developer will assist with review and comment upon survey of the Site for the Project.

10.1.1.8 When requested, Developer will prepare meeting minutes.

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

10.1.2 Review of Design Documents.

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

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

10.1.2.1.2 Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of

the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

10.1.2.1.3 Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

10.1.2.1.4 Provide plan review.

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

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

10.1.2.1.5.2 Provides detailed estimate for proposed value-engineering items;

10.1.2.1.5.3 Defines methodology or approaches that maximize value; and

10.1.2.1.5.4 Identifies design choices that can be more economically delivered.

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

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

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

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

10.1.2.1.6.4 Provides the District with written confirmation that:

10.1.2.1.6.4.1 Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards.

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

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

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

10.1.3 Budget of Project Costs.

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

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

10.1.3.2.1 Overhead and profit;

- 10.1.3.2.2** Supervision;
- 10.1.3.2.3** General conditions;
- 10.1.3.2.4** Layout & Mobilization (not more than 1%);
- 10.1.3.2.5 Submittals, samples, shop drawings (not more than 3%);
- 10.1.3.2.6** Bonds and insurance (not more than 2%);
- 10.1.3.2.7** Close-out documentation (not less than 3%);
- 10.1.3.2.8** Demolition;
- 10.1.3.2.9** Installation;
- 10.1.3.2.10** Rough-in;
- 10.1.3.2.11** Finishes;
- 10.1.3.2.12** Testing;
- 10.1.3.2.13** Owner and Maintenance Manuals; and
- 10.1.3.2.14** Punchlist and District acceptance.

10.1.4 Construction Schedule and Phasing Plan

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

10.1.5 Construction Planning and Bidding

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

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

10.1.5.3 Attend meetings at the Site with the Architect and the design team as needed.

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

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

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

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

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

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

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

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

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

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

10.1.5.10.4 Copies of all subcontractor bids received divided by trade that corresponds to the final spread sheet with a cover sheet indicating the scope and subcontractors that provided bids as well as those that were asked to bid, but did not submit a proposal. This sheet should have the dollar amounts for each subcontractor that provided a bid with the first column being the proposed subcontractor for that trade.

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

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

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

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

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

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

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

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

10.1.5.13 Any other services that are reasonable and necessary to control the budget and schedule. List those areas where subconsultants will be required and where the Respondent

has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project.

10.2 Schedule

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

10.3 Ownership of Records

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

10.4 Open Book Policy

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

10.5 Compensation to Developer for Preconstruction Services

District agrees to reimburse Developer in the total amount not to exceed [AMOUNT IN WORDS] DOLLARS (\$[AMOUNT IN NUMBERS]), for the performance of services contemplated by this Agreement. Developer shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. In the event Developer and District continue with the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price ("GMP") to be paid to Developer by District.

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

10.6 Termination before Construction Phase

10.6.1 Before the notice to proceed with the Construction Phase is issued by the District, this Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Developer. In the event of

such a termination by District, the District shall pay Developer for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Developer pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Developer for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to completed work and work in process that would best serve the District if a completed product was presented.

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

10.7 Construction Phase

Developer shall not commence work for which a contractor is required to be licensed in accordance with Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code and for which Division of the State Architect approval is required can be performed before receipt of the required Division of the State Architect approval.

11. Construction of Project

11.1 Construction of Project

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

11.1.2 Contract Time / Construction Schedule

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

11.1.3 Schedule of Values

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

11.1.4 Liquidated Damages

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

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

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

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

11.1.5 Guaranteed Maximum Price

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

11.1.6 Modifications

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

11.1.7 Labor Compliance Monitoring and Enforcement by Department of Industrial Relations

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

12. Maintenance

Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all punch list items and warranties against defects in materials and workmanship of Developer as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil

Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

13. Utilities

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

14. Taxes and Other Impositions

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

15. Insurance

15.1 Developer's Insurance

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

15.1.1 Commercial General Liability and Automobile Liability Insurance

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

15.1.1.2 Developer's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five

thousand dollars (\$25,000) for self-insured retention, respectively, unless approved in writing by District.

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

15.1.2 Excess Liability Insurance

15.1.2.1 If Developer's underlying policy limits are less than required, subject to 15.1.2.3 below, Developer may procure and maintain, during the life of the Project, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in aggregate with its underlying policy, the insurance requirements herein.

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

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

15.1.3 Subcontractor

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

15.1.4 Workers' Compensation and Employer's Liability Insurance

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

15.1.4.2 Developer shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Developer shall require its Subcontractor(s), if any, to procure and

maintain Workers' Compensation Insurance and Employer's Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Developer's insurance. If any class of employee or employees engaged in Work on the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Developer shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

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

15.1.5.1 Developer shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, rain, dust, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

15.1.6 Pollution Liability Insurance

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

15.1.6.2 Developer warrants that any retroactive date applicable to coverage under the policy shall predate the Effective Date of this Facilities Lease and that continuous coverage will be

maintained or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.

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

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

15.1.7.1 Developer shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Developer and its Subcontractor(s) have procured all required insurance and Developer has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

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

15.1.7.2.1 A clause stating the following, or other language acceptable to the District:

“This policy shall not be canceled and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice.”

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

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

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

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

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

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

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

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

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

15.1.7.9 All policies shall be written on an occurrence form.

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

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

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

15.1.8 Insurance Policy Limits

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

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

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

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

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

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

15.2 District's Insurance

15.2.1 Rental Interruption Insurance

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

15.2.2 Property Insurance

District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be named as additional insureds or co-insureds thereon by way of endorsement. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. Indemnification and Defense

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

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

16.3 Without limitation of the provisions herein, if Developer's obligation to indemnify and hold harmless the Indemnitees or its obligation to defend Indemnitees as provided herein shall be determined to be void or unenforceable, in whole or in part, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of Developer's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein. Further, Developer shall be and remain fully liable on its agreements and obligations herein to the fullest extent permitted by law.

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

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

16.6 The District may retain so much of the moneys due to Developer as shall be considered necessary, until disposition of any such Claims or until the District, Architect(s) and Construction Manager(s) have received written agreement from Developer that Developer will unconditionally defend the District, the Architect(s)

and Construction Manager(s), their respective officers, agents and employees, and pay any damages due by reason of settlement or judgment.

16.7 Developer's defense and indemnification obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

17. Eminent Domain

17.1 Total Taking After Project Delivery

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

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

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

17.2 Total Taking Prior to Project Delivery

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

17.3 Partial Taking

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

17.3.1This 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

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

corresponding reduction in the payments required pursuant to the GMP provisions indicated in **Exhibit C**.

18. Damage and Destruction

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

19. Abatement

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

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

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

19.3.1 Repair the Project to full use.

19.3.2 Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, and that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

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

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

20. Access

20.1 By Developer

Developer shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to this Facilities Lease. Following the acceptance of

the Project by District, Developer may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Developer.

20.2 By District

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

21. Assignment, Subleasing

21.1 Assignment and Subleasing by the District

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

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

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

21.2 Assignment by Developer

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

22. Termination, Default And Suspension

22.1 Termination; Lease Terminable Only As Set Forth Herein

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

hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated or modified pursuant to an express provision of this Facilities Lease.

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

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

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

22.2 District's Request for Assurances

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

22.3 District's Right to Terminate Developer for Cause

22.3.1 Grounds for Termination

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

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

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

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

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

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

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

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

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

22.3.1.9 Developer fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

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

22.3.2 Notification of Termination

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

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

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

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

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

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

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

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

22.3.3 Effect of Termination

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

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

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

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

22.3.3.3 Developer shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Developer that have not been incorporated in the construction of the Work, or which are not in place in the Work. Developer and its Surety shall be liable upon the performance bond for all damages caused the District by reason of Developer's failure to complete the Work under this Facilities Lease.

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

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

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

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

22.3.3.8 The District shall have the right (but shall have no obligation) to assume and/or assign to a replacement contractor or construction manager, or other third party who is qualified and has sufficient resources to complete the Work, the rights of Developer under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor

shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Facilities Lease. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, Developer shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractors under Subcontracts or other obligations or commitments. Developer must include this assignment provision in all of its Facilities Leases with its Subcontractors.

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

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

22.4 Termination of Developer for Convenience

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

22.4.2 Upon notice, Developer shall:

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

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

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

22.4.3 Within 30 days of the notice, Developer shall submit to the District a payment application for the actual cost for labor, materials, and services performed, including all Developer's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Developer shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

22.4.4 If Developer objects to the termination for convenience, the District retains the right to all the options available to the District under a termination for cause.

22.5 Developer Remedies Upon District Default

22.5.1 Events of Default by District Defined

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

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

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

22.5.2 Remedies on District's Default

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

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

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

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

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

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

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

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

22.5.3 District's Continuing Obligation

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

22.5.4 No Remedy Exclusive

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

22.6 Emergency Termination Pursuant to Public Contracts Act of 1949

22.6.1 This Facilities Lease is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

22.6.1.1 Section 4410 of the Government Code states:

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

22.6.1.2 Section 4411 of the Government Code states:

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

22.6.2 Compensation to Developer shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price may control. The District, at its sole discretion, may adopt the Schedule of Values Price as the value of the work done or any portion thereof.

22.7 Suspension of Work

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

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

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

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

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

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

22.7.1.2 Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order in **Exhibit D**. This amount shall be full compensation for all Developer's and its Subcontractor(s)' changes in the cost of performance of the Facilities Lease caused by any such suspension, delay or interruption.

23. Limitation of District Liability

District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but

not limited to, lost profits or revenue, lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

24. Notices

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

If to District:

Berkeley Unified School District
15 Parker Street
Berkeley, CA 94710
ATTN: [Name, Title]

If to Developer:

[Developer]
[Address]
Attn: [Name, Title]

With a copy to:

Dannis Woliver Kelley
750 B Street, Suite 2600
San Diego, CA 92101
ATTN: [Name]

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

25. Binding Effect

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

26. No Additional Waiver Implied by One Waiver

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

27. Severability

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

28. Amendments, Changes and Modifications

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

29. Net-Net-Net Lease

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

30. Execution in Counterparts

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

31. Developer and District Representatives

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

32. Applicable Law

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

33. Attorney's Fees

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

34. Captions

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

35. Prior Agreements

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

36. Further Assurances

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

37. Recitals and Exhibits Incorporated

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

38. Time of the Essence

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

39. 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: _____, 20__

Berkeley Unified School District

[Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Attached is the Legal Description for:

[Name of] Project

[Address]

APN: _____

<INSERT>

EXHIBIT B

DESCRIPTION OF PROJECT

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

<INSERT>

EXHIBIT C

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

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

EXHIBIT D

GENERAL CONSTRUCTION PROVISIONS

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

EXHIBIT D-1

SPECIAL CONDITIONS

Attached are the special terms and conditions for the Project.

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20__, and is made by and between _____ ("Developer"), as Lessor, and the Berkeley Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of _____, 20__, (the "Lease") for the leasing by Developer to District of the completed Project in [City], California, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Developer in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term for the Lease Payments under the Facilities Lease commenced on _____, 20__ and will expire at 11:59 P.M. on _____, 20__.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20__

Dated: _____, 20__

Berkeley Unified School District

[Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT F

CONSTRUCTION SCHEDULE

Attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Developer shall meet.

[To Be Attached.]

EXHIBIT G

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit "D") and that has been approved by the District.

[To Be Attached.]

EXHIBIT H

PROJECT LABOR AGREEMENT

Attached is the Project Labor Agreement applicable to this Project.

BERKELEY UNIFIED SCHOOL DISTRICT PROJECT LABOR AGREEMENT

The purpose of this Agreement is to promote efficiency of construction operations during the Berkeley Unified School District Measure I New Construction and Modernization Projects (“Projects”) as defined herein, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Projects, while also helping to increase training and employment opportunities for the District’s students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the District’s schools.

WHEREAS, the timely and successful completion of the Projects is of the utmost importance to the Berkeley Unified School District (“District”) to meet the educational needs of the District’s students and to avoid increased costs resulting from delays in construction; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by the unions affiliated with the Building and Construction Trades Council of Alameda County (“Unions”) and any other labor organization which is signatory to this Agreement employed by contractors and subcontractors who are signatory to this Agreement; and

WHEREAS, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the District, the Unions and Contractor/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Projects by the Contractor/Employer(s), and further, to encourage close cooperation among the Contractor/Employer(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the Agreement is not intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Projects, insofar as a legally binding agreement exists between the Contractor/Employer(s) and the affected Union(s) except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contracts for construction work on the Projects will be awarded in accordance with the applicable provisions of the Public Contract Code, Education Code and other applicable California law; and

WHEREAS, all of the funding for the construction of the Projects will come from Measure I, passed by the Berkeley residents, and paid for by the Measure I special tax on

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the properties owned by Berkeley residents, in contrast to typical California school projects, which are funded through a balance of local and State funds; and

WHEREAS, the District has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects, or to reject all bid proposals, or to use other legal project delivery methodologies; and

WHEREAS, the District places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and has identified the need to prepare its students for lifelong careers and continuing education, recognizing the ability of local apprenticeship programs to provide meaningful and sustainable careers in the building and construction industry; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1. DEFINITIONS

1.1 “Agreement” means Project Labor Agreement.

1.2 “District” means the Berkeley Unified School District, its employees, agents, and administrative staff under its Superintendent.

1.3 “Contractor/Employer(s)” means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and enters into a contract with the District not excluded in this Agreement or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Projects under contract terms and conditions approved by the District and which incorporate the Agreement.

1.4 “Construction Contracts” means the public works contracts not excluded in this Agreement which will be signed by the District and which are necessary to complete the Projects.

1.5 "Projects" is defined to include all phases of the construction of new facilities and upgrading and repair to all existing facilities covered in construction contracts executed by the District and that are covered by this Agreement in Section 2.2.

1.6 "Union" or "Unions" means the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions").

1.7 "Project Manager" means the person(s) or business entity(ies) designated by the District to oversee all phases of construction on the Projects and to oversee the

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implementation of this Agreement and who works under the guidance of the District's Authorized Representative.

1.8 "Chief Facilities Officer" means the Chief Facilities Officer for the Berkeley Unified School District.

1.9 "Master Agreement" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "Berkeley Resident" for purposes of this Agreement means any individual who at any time during the Projects' construction can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resided within either the boundaries of the Berkeley Unified School District or the Berkeley City Limits both on the date of such certification and the effective date of this Agreement.

1.11 "District Graduate" is a person who has graduated from the Berkeley Unified School District.

1.12 "First Period Apprentice" is a first period apprentice who is enrolled in a State of California approved apprenticeship program that is a joint labor-management apprentice program.

1.13 "General Contractor" means the entity with overall project schedule responsibility, such as a General Contractor, Construction Manager, Lease-Leaseback partner, Prime Contractor, etc.

1.14 "Allocated" regarding project funding means the point in time in which a project is defined enough to where a preliminary budget is created and established in the Measure I program budget tracking system managed by the Program Manager.

ARTICLE 2.
SCOPE OF AGREEMENT

2.1 Parties: The Agreement shall apply and is limited to all Contractors/Employer(s) performing construction contracts on the Projects, the District and the Building and Construction Trades Council of Alameda County, AFL-CIO (“Council”) and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement (“Signatory Unions”). It is agreed that liability under this Agreement is several and not joint.

2.2 Project Description:

2.2.1 The District will apply the Agreement as a contract specification to the award of construction contracts identified by the District for the Project, which are those construction contracts funded in whole or in part by Measure I General Obligation

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bonds, and which were let for bid, or for which RFQ’s or RFP’s were issued, after the date of this Agreement. Construction projects include those that provide for the construction of new facilities, the demolition of facilities or the renovation of current facilities.

2.2.2 Exempt Work. However, the Parties acknowledge that the District may utilize five percent (5%) of Measure I proceeds under a special program to be established by the District and the City of Berkeley to facilitate a transition for emerging Berkeley businesses to succeed in performing work under the Project and to assist the District in making a transition to utilization of the Agreement (“Exempt Work”). The District will ensure that no more than ten percent (10%) of the work of any craft be executed under the Exempt Work, and the Unions agree that they will not undertake any strike or work stoppage against a contractor performing work at a District site under this provision. Either Party to the agreement can call to meet and confer regarding the implementation of this section 2.2.2.

2.3 Project Labor Disputes: All project labor disputes involving the application or interpretation of a Master Agreement to which a signatory Contractor/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of the Project Stabilization Agreement shall be subject to resolution by the Joint Administrative Committee and the grievance arbitration procedure set forth in Article 13.

2.4 Covered Work:

2.4.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation, pipelines, site preparation, construction survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.4.2 This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion unless it is performed by District Employees.

2.4.3 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to and dedicated to the Projects, and at any batch plant(s) constructed or used solely to supply materials to the Projects, when those sites are dedicated exclusively to the Projects. This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.) Additionally, it is agreed hereby that any off-site work, including

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fabrication necessary for the Projects defined herein, that are covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.

2.4.4 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the District within ten (10) days of written request or as required by bid specifications.

2.4.5 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by construction persons employed under this Agreement who may be

directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

2.5 Work covered by the Project Stabilization Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors, except that Articles 4, 13, and 14 of the Project Labor Agreement shall prevail and be applied to such work.

2.6 Exclusions. The following shall be excluded from the scope of this Agreement.

2.6.1 Work that has been historically performed by public utilities is not intended to be covered by this Agreement even if such work is funded all or in part by local bond funds.

2.6.2 The award of construction contracts funded in whole by Measure AA General Obligation bonds, or funded in whole by any currently existing General Obligation bonds other than those for Measure I.

2.6.3 The Exempt Work identified in section 2.2.2 of this Agreement.

2.6.4 Work, independent of job-site construction work contracts, performed by the District related to the purchase or lease of specialized equipment and

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work performed by manufacturers' representatives, office equipment vendors, or District personnel.

2.6.5 All off-site manufacture, warehousing and handling of materials, equipment or machinery except when covered by prefabrication provisions included in a Schedule A agreement on the effective date of this Agreement.

2.6.6 All employees of the design team or other consultants to the District not performing craft or manual labor within the scope of this Agreement.

2.6.7 Off-site maintenance of leased equipment and onsite supervision of such work.

2.6.8 The Agreement shall not apply to a Contractor/Employer's

executives, managerial employees, engineering employees and supervisors (except those covered by existing building and construction trades collective bargaining agreements), and office and clerical employees.

2.6.9 The District shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the Public Contract Code and Education Code.

**ARTICLE 3.
EFFECT OF AGREEMENT**

3.1 By executing the Agreement, the Unions and the District agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of a Construction Contract for the Projects, whether as contractor or subcontractor, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Letter of Assent in the form attached hereto as Addendum A.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of the Construction Contract, the Contractor/Employer(s) shall provide a copy of this Agreement, as it may from time to time be modified, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing to be bound by each and every provision of this Agreement prior to the commencement of work. This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

**ARTICLE 4.
WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS**

4.1 The Unions, District and Contractor/Employers covered by the Agreement agree that for the duration of the Projects:

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4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Projects, at the job site of the Projects or at any other facility of District because of a dispute on the Projects. Disputes arising between the Unions and Contractor/Employers on other District projects are not governed by the terms of the Agreement or this Article.

4.1.2 As to employees employed on the Projects, there shall be no lockout of any kind by a Contractor/Employer covered by the Agreement.

4.1.3 If a master collective bargaining agreement between a Contractor/Employer and the Union expires before the Contractor/Employer completes the performance of the Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified master collective bargaining agreement, the Union agrees that it will not strike the Contractor/Employer on said contract for work covered under this Agreement and the Union and the Contractor/Employer agree that the expired master collective bargaining agreement shall continue in full force and effect for work covered under this Agreement until a new or modified master collective bargaining agreement is reached between the Union and Contractor/Employer. If the new or modified master collective bargaining agreement reached between the Union and Contractor/Employer provides that any terms of the master collective bargaining agreement shall be retroactive, the Contractor/Employer agrees to comply with any retroactive terms of the new or modified master collective bargaining agreement which are applicable to employees who were employed on the projects during the interim with retroactive payment due within seven (7) days of the effective date of the modified Master Agreement.

4.2 In the case of nonpayment of wages and trust fund contributions on the Projects, the Union shall give the District and the Contractor/Employer(s) 5 business day notice of the intent when nonpayment of trust funds has occurred and three (3) business days notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer(s)' or their subcontractor's workforce, during which time the Contractor/Employer shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from an Contractor/Employer who has failed to pay his/its fringe benefit contributions or failed to meet his/its weekly payroll shall not be considered a violation of this Article.

4.3 Any party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity, when a breach of this Article is alleged to have occurred:

4.3.1 A party invoking this procedure shall notify, by email, facsimile or telephone, the party alleged to be in violation, the District representative, and the Building and Construction Trades Council of Alameda County and the involved local Union if a Union is alleged to be in violation.

4.3.2 Upon receipt of said notice, the recipient party shall notify William Riker, as the designated arbitrator, or, Jerrilou Cossack, as the designated alternate arbitrator under this procedure. In the event that the designated arbitrator is unavailable at any time, the designated alternate arbitrator will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article 13.2. The designated arbitrator named above or his/her alternate will designate a place for, schedule and will convene a hearing within twenty-four (24) hours if it is contended that the violation still exists. It is further understood, that the Joint Administrative Subcommittee (defined in Article 13.2), shall review the designated arbitrators named above, prior to the award of the first construction contract, and thereafter annually. The purpose of this review is to either confirm or re-designate the arbitrators from the list of arbitrators in Article 13.2.

4.3.3 The Arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator. The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of the Agreement has occurred. The Arbitrator shall retain jurisdiction to determine compliance with this Article and to establish the appropriate sum of damages, which shall not be less than one thousand dollars (\$1,000.00) or more than fifteen thousand dollars (\$15,000.00) for each shift.

4.3.4 The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

4.3.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2(4) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.3.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.3.7 The fees and expenses of the arbitrator shall be divided equally between the parties.

4.3.8 If, after final order by any Court of competent jurisdiction, the offending party continues to breach the terms of Article 4 of this Agreement, the non-offending party shall have the option to recover monetary damages associated with the breaching party's failure to comply with the Agreement and court order, including but not limited to delay damages and escalation costs.

ARTICLE 5. PRECONSTRUCTION CONFERENCE

5.1 A pre-construction conference shall be held prior to the commencement of the Construction Contract. Such conference shall be attended by a representative each from the participating Contractor/Employer(s), including all subcontractors, Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will be held at least 7 days before the work commences. All meetings shall be held either at the District's offices at 1720 Oregon Street, Berkeley, CA or at the offices of the Building Trades Council of Alameda County, 8400 Enterprise Way, Oakland, CA 94621.

ARTICLE 6. NO DISCRIMINATION

6.1 The Contractor/Employer(s) and Union(s) agree not to engage in any form of discrimination on the ground or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or Acquired Immune Deficiency Syndrome or AIDS Related Condition (AIDS/ARC), or any other basis made illegal by law against any employee, or applicant for employment, on the Projects.

ARTICLE 7. UNION SECURITY

7.1 The Contractor/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 No employee covered by this Agreement can be required to join any Union as a condition of being first employed on Projects. Each employee covered by this Agreement shall be subject to the Union's valid Union security provisions contained in the Schedule A of the craft in which he is employed; provided however, that "core workforce" employees as defined in Article 8.1 and employees employed pursuant to Article 8.6 may, at their option, refrain from joining a Union as may otherwise be

required by such Union security provision; provided however, that such employees shall nevertheless be required, for the period during which they are performing work under the Agreement, to pay such monthly dues, service dues, "working dues" or administrative dues as are uniformly required of employees working under this Agreement and subject to the full Union security provisions of the applicable Schedule A.

7.3 All employees who are employed by the Contractor/Employer(s) on the Projects shall, as a condition of employment, on or before the eighth (8th) day of

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consecutive or cumulative employment on a Construction Contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non -union employees from joining the local union.

7.4 Authorized representatives of the Union(s) shall have access to the Projects whenever work covered by this Agreement is being, has been or will be performed on the Projects.

ARTICLE 8. REFERRAL

8.1 The Union(s) shall be the primary source of all craft labor employed on the Projects. However, in the event that a Contractor/Employer has his/her own Core workforce, the Contractor/Employer(s) may request by name, and the local shall honor, referral of persons who demonstrate the following qualifications:

8.1.1 possess any license required by state or federal law for the Project work to be performed;

8.1.2 have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;

8.1.3 were on the Contractor/Employer(s)' active payroll for at least sixty (60) out of the one hundred (100) calendar days prior to the contract award;

8.1.4 have the ability to perform safely the basic functions of the applicable trade; and

8.1.5 are a resident of the Green Corridor.

8.2 The Union will refer to such Contractor/Employer(s) one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor/Employer(s)' "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor/Employer(s) crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor/Employer(s)' work the ratio shall be maintained and when the Contractor/Employer(s)' workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractor/Employer(s) signatory to a Local, Regional, and/or National collective bargaining agreements with Union(s) signatory hereto shall be bound to use the hiring hall provisions contained in the Master Agreement of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the Master Agreement(s) as they relate to such Contractor/Employer(s), except the provisions limiting the number of core employees

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and the provisions regarding the use of Berkeley Residents as core employees.

8.3 Contractor/Employer(s) shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions when such procedures are not in violation of Federal law.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer(s) for employees within a forty-eight (48) hour period, weekends and holidays excluded, after such requisition is made by the Contractor/Employer(s), the Contractor/Employer(s) shall be free to obtain work persons from any source. The Contractor/Employer(s) shall immediately notify the appropriate Union of the identity, including name, address, telephone number and social security number, of any such person(s) hired from an alternative source.

8.5 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor/Employer(s), and document such efforts as required.

8.6 Subject to the limitation of applicable law, the parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the City of Berkeley, to meet the needs of the Projects and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures of the Unions, of qualified Berkeley Residents, as journeymen and apprentices on the Projects

and entrance into such apprenticeship and training programs as may be operated by the signatory Unions consistent with the applicable Apprenticeship Program's State-approved Standards.

ARTICLE 9. BENEFITS

9.1 All Contractor/Employer(s) agree to pay contributions to the established vacation, pension or other form of deferred compensation plan, apprenticeship, and health benefit funds for each hour worked on the Projects in the amounts designated in the Master Agreements of the appropriate local. The Contractor/Employer(s) shall not be required to pay contributions to any other trust funds or in amounts that are not contained in the published prevailing wage determination to satisfy their obligation under this Article except that Contractor/Employer(s) who are signatory to collective bargaining agreements with the respective trades shall continue to pay all trust fund contributions as outlined in such collective bargaining agreements.

9.2 By signing this Agreement, the Contractor/Employer(s) adopt and agree to be bound by the written terms of the legally established trust agreements, as described in 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds.

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Projects shall be governed by the

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Master Agreement of the respective crafts, copies of which shall be on file with the District, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered in this Agreement, the Master Collective Bargaining Agreement will prevail. When a subject is covered by both the Master Collective Bargaining Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

ARTICLE 10. EMPLOYEE GRIEVANCE PROCEDURE

10.1 All disputes involving discipline and/or discharge of employees working on the projects shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Projects shall be disciplined or dismissed without just cause.

ARTICLE 11. COMPLIANCE

11.1 It shall be the responsibility of the Contractor/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 9. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit trust funds to collect delinquent trust fund contributions from Employers on the Projects. The District shall monitor and enforce compliance with the prevailing wage requirements of the State and Contractor/Employer(s)' compliance with this Project Stabilization Agreement.

**ARTICLE 12.
JOINT ADMINISTRATIVE COMMITTEE**

12.1 The parties to this Agreement shall establish a nine (6) person Joint Administrative Committee. This Committee shall be comprised of three (3) representatives selected by the District and three (3) representatives selected by the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

12.2 The Joint Administrative Committee shall meet as requested by the Parties to review the implementation of the Agreement and the progress of the Projects. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be referred directly to the Joint Administrative Committee for review and recommendation.

**ARTICLE 13.
GRIEVANCE ARBITRATION PROCEDURE**

13.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf,

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or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within ten (10) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in Section 13.1 may be extended by mutual agreement (oral or written) of the parties.

13.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer shall confer and attempt to resolve the grievance.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may submit it within three (3) business days to the Joint Administrative Subcommittee (consisting of one District and one Union representative of the Joint Administrative Committee), which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Joint Administrative Committee), to confer in an attempt to resolve the grievance. If the dispute is not resolved within such time five (5) business days after its referral or such longer time as mutually agreed upon, it may be referred within five (5) business days by either party to Step 3.
- Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties cannot mutually agree on the selection of an arbitrator, the arbitrator shall be selected by the alternate striking method from the following list: Jerrilou Cossack, Thomas Angelo, William Riker, Larry Kay, and Robert Clark. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 13.2

may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE 14. JURISDICTIONAL DISPUTES

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the Building and Construction Trades Unions and the Employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employer and Union parties to this Agreement.

14.3 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, D.C., at the request of any party to a jurisdictional dispute under this Agreement, an Arbitrator shall be chosen by the procedures specified in Article 5, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan and the Arbitrator’s hearing on the dispute shall be held at the applicable Building and Construction Trades Council. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer’s assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

14.5 Each Employer shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer and the Owner will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

**ARTICLE 15.
MANAGEMENT RIGHTS**

15.1 The Contractor/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees except that lawful manning provisions in the Master Agreement shall be recognized.

**ARTICLE 16.
SAVINGS CLAUSE**

16.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the unions will no longer be bound by the provisions of Article 4.

**ARTICLE 17.
TERM**

17.1 The Agreement shall be included as a condition of the award of all construction contracts for the Projects.

17.2 The Agreement shall continue in full force and effective until the completion of the Projects. However, upon the fifth anniversary of the execution of the Agreement, the District shall have the unilateral right to terminate the Agreement without

cause therefore. However, if the District does not exercise its right to terminate the Agreement within thirty (30) days of the fifth anniversary of the execution of the Agreement, then, the Agreement shall continue in full force for an additional five- year term, at which time the District will again be afforded the unilateral right to terminate the Agreement without cause, to be exercised under the same conditions as the initial right to terminate.

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ARTICLE 18.
LOCAL BERKELEY HIRE REQUIREMENTS

18.1 The Parties agree to a goal that Berkeley Residents, and especially District Graduates, will perform a minimum of 30% of the hours worked, on a craft by craft basis on the Projects. In the event that no Berkeley residents or District Graduates are available to fulfill the 30% local hire requirement, the next tier of residents will come from the Green Corridor. This includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Richmond, Oakland, and San Leandro. The Contractor/Employer(s) shall make good faith efforts to reach this goal through the utilization of the Unions’ hiring hall procedures. The Unions shall make good faith efforts in their recruiting and training of District Graduate and Berkeley Resident workers and in their hiring hall procedures to facilitate this 30% goal on the Projects.

18.2 Should any of the contractors performing work on the Projects fail to meet this 30% goal and fail to demonstrate “good faith” efforts to do so, through a specific submittal process to be included in their contractual requirements, the contract’s 10% retention will be held until such time that this failure is remedied. Acceptable remedies to correct continued failure may include, but not be limited to the following remedies, as determined by the Joint Administrative Committee (as established in Section 12):

18.2.1 Classification as a non-qualified bidder on future District projects;

18.2.2 Commitment, with documentation, to employ District Graduates, Berkeley residents or Green corridor Residents on non-District projects for a determined number of work hours; and

18.2.3 Bringing in District Graduates and Berkeley residents as new apprentices and continuing their employment for up to 12 months.

18.3 A Contractor/Employer(s) who has employed a District Graduate for up to six months preceding the start of the District project for a minimum of at least 100 hours per month and has the ability to perform safely the basic functions of the applicable trade

may receive credit for 50% of these hours towards the 30% goal. A Contractor/Employer may also receive credit for 50% of the documented hours performed by District Graduates or Berkeley Residents on the Contractor's non-District projects, when such hours are concurrent with the Contractor's work on the Projects.

18.4 The maximum total combined credit that can be applied for in 18.3 is half of the 30%.

18.5 The contractors may use District student intern's hours for credit towards the local hiring goals. Internships for credit may be up to three (3) interns per year at up to 3000 hours per year per intern.

18.6 Should any Contractor/Employer performing work on the Projects exceed the 30% local hire goal as set forth in this Agreement, they shall be acknowledged at the appropriate public, televised school board meeting for their efforts at the completion of

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their contract scope.

18.7 Apprenticeship Provision:

18.7.1 The Prime Contractor and their sub-contractors will be required to hire 1 District Graduate, Berkeley Resident or Berkeley Student as a first period apprentice for every 5 million dollars of total construction cost. There can be no more than 2 entry-level apprentices credited for each craft, and the general contractor will be able to include entry-level apprentices hired by their subcontractor to meet this requirement. The District will refer names of former students or recent graduates to the Union and Contractors and the Unions will agree to cooperate with the Contractor in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the Master Agreements. The failure of the District to refer names and/or the Union to provide those apprentices upon request will relieve the Prime contractor of this District Graduate/Berkeley Resident/Student first period apprentice hiring responsibility.

18.7.2 The General Contractor , or subcontractor who hires such Berkeley Resident/Student First Period Apprentices shall be credited with two work hours towards the 30% local work hours, for each hour worked by the first period Berkeley Resident/Student apprentices.

18.7.3 The intent of this provision is to work the new apprentices to the full extent permissible by state law and the Master Agreements. Failure of the General Contractor and their subcontractors to maintain qualified apprentices on the job will be subject to Division of Apprenticeship Standards penalties, and further penalties as determined by the Joint Administrative Committee.

18.8 Career Technical Education Program. Both the District and the Building Trades agree that an active school to career program in the trades can be a benefit to many Berkeley students. The Building Trades and the District agree to collaborate in the development and implementation of a Construction Career Technical Education program.

The Building Trades agree to support the District's programs by doing the following:

1. Assisting the Green Academy by:
 - a. Providing speakers at least twice a year,
 - b. Escorting field trips to existing apprenticeship centers at least three times a year, per the school's schedule,
 - c. Mentoring students. Identify at least five individuals who will serve as mentors,

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- d. Internships for students. The Unions will explore providing internships. The Unions will assist the program in identifying willing contractors and suppliers to provide additional internships.
2. Actively participate in the District's CTE Advisory Committee which may meet as frequently as once per month.
3. Career Fairs. Agree to actively participate with multiple trade booths in two career fairs per year.
4. Actively participate in helping to create and provide hands-on training for, pre-apprenticeship programs set up by the District for adult school and b-tech students. Such participation may begin slowly, but it is envisioned that the trades will spend no less than 100 hours per year in assisting this program.
5. Assist in exploring the feasibility of the District students participating in local pre-apprenticeship programs, such as the Cypress-Mandela program. Support

the District efforts with this program if a mutual agreement with such a program can be worked out.

The parties agree to meet around the implementation of the program at the discretion of the District.

ARTICLE 19.
MISCELLANEOUS PROVISIONS

19.1 Integration. This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

19.2 No Representations or Warranties. Each of the parties acknowledges no one has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein to induce them to execute this Agreement, and that this Agreement is not executed in reliance upon any such promise, representation or warranty.

19.3 Modification. Each of the parties acknowledges and agrees that this Agreement may be amended only by a writing signed by all of the parties.

19.4 Interpretation. Each of the parties acknowledges and agrees that this Agreement is an accord and satisfaction to be construed as whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.

19.5 Forum. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda in accordance with the procedures set forth in this Agreement.

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19.6 Choice of Law. This Agreement shall be governed by and interpreted under the laws of the State of California and the Federal laws of the United States of America as applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California.

19.7 No Attorneys Fees. No party shall be entitled to recover an award of attorneys fees or costs with respect to any action or proceeding seeking relief under this Agreement.

19.8 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

19.9 Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.10 Ratification by Governing Board. This Agreement shall not be binding on the District until it is ratified by the Governing Board at a publicly noticed Governing Board meeting.

Berkeley Unified School District

By: _____
Date: _____
John T. Selawsky, Clerk

Building and Construction Trades Council of Alameda
County, AFL-CIO (Council)

By: _____ Date: _____
Andreas Ferreira Cluver
Secretary-Treasurer

Asbestos Workers, Local 16 Boilermakers, Local 549

By: _____ Steve Steele

By: _____ Dale Bilyeu

Bricklayers & Allied Craftsmen, Local 3 Roofers and Waterproofers, Local 81

By: _____ Tom Spear

By: _____ Doug Ziegler

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District Council of Plasterers and
Cement Masons of Northern California

Cement Masons, Local 300

By: _____ Mike Moylan

By: _____ Mike Moylan

Plasterers, Local 66 Electrical Workers, Local 595

By: _____ Chester Murphy, Jr.

United Association of Steamfitters, Pipefitters, Plumbers & Gasfitters, Local 342

By: _____ Victor Uno

Laborers District Council on behalf of, Hod Carriers, Local 166, Laborers, Local 67, Laborers, Local 304

By: _____ Jay Williams

By: _____ Oscar de la Torre

Hod Carriers, Local 166 Laborers, Local 67

By: _____ Sam Robinson

By: _____ Victor Para

Laborers, Local 304 Operating Engineers, Local 3

By: _____ Fernando Estrada

By: _____ Russ Burns

District Council Ironworkers of the State of California and Vicinity

Ironworkers, Local 378

By: _____ Joe Standley

By: _____ Jeff Mcuen

Sheet Metal Workers, Local 104 Sign Display & Allied Crafts, Local 510

By: _____ Bruce Word

By: _____ Joseph Toback

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Sprinkler Fitters, Local 483 Teamsters, Local 853

By: _____ Stan Smith, Jr.

By: _____ Rome Aloice

Elevator Constructors, Local 8 United Association of Journeyman &
Apprentices of the Pipe Fitting Industry,
Underground Utility / Landscape, Local
355

By: _____ Pat McGarvey

By: _____ Dennis Soares

District Council 16, Painters & Allied Trades on behalf of Auto & Marine Painters, Local 1176,
Carpet & Linoleum Layers, Local 12, Glaziers, Architectural
Metal & Glassworkers, Local 169, Painters & Tapers, Local 3

Northern California Regional Council of Carpenters on behalf of, Carpenters, Local 713, Carpenters,
Local 2236, Lathers, Local 68L, Pile Drivers, Local 34, Millwrights, Local 102

By: _____ Doug Christopher

By: _____ Robert Alvarado

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Addendum A: Agreed To Letter of Assent

[Addressee]
[Address]
[City and State]

Re: Berkeley Unified School District Measure I New Construction and Modernization
Projects, Project Stabilization Agreement.

Letter of Assent for _____

(Projects Name)

Dear Mr. /Ms. _____:

The undersigned party confirms that it agrees to be a party to and bound by the Berkeley Unified School District Measure I New Construction and Modernization Projects, Project Stabilization Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Letter of Assent, the undersigned party subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds and ratifies and accepts the trustees appointed by the parties to such trust funds.

Such obligation to be a party to and bound by this Agreement shall extend to all work covered by said Agreement undertaken by the undersigned party on the Berkeley Unified School District Measure I New Construction and Modernization Projects. The undersigned party shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Letter of Assent.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR:

Project Contract Number:

California State License Number: _____ or Motor Carrier (CA) Permit Number

Name and Signature of Authorized Person: _____

(Print Name)

(Title)

(Signature)

(Date)

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APPENDIX C-1

**NON-COLLUSION DECLARATION
(Public Contract Code Section 7106)**

The undersigned declares:

I am the _____ of _____, the party making the
foregoing [Title] [Name of Firm]
bid/proposal.

The bid/proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid/proposal is genuine and not collusive or sham. The bidder/proposer has not directly or indirectly induced or solicited any other bidder/proposer to put in a false or sham bid. The bidder/proposer has not directly or indirectly colluded, conspired, connived, or agreed with any bidder/proposer or anyone else to put in a sham bid/proposal, or to refrain from bidding/proposing. The bidder/proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid/proposal price of the bidder/proposer or any other bidder/proposer, or to fix any overhead, profit, or cost element of the bid/proposal price, or of that of any other bidder/proposer. All statements contained in the bid/proposal are true. The bidder/proposer has not, directly or indirectly, submitted his or her bid/proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid/proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder/proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder/proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

_____, [Date]

at _____, _____.
[City] [State]

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

APPENDIX C-2

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

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

OPTION 1. Bidder/Proposer is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OPTION 2. Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

CERTIFICATION:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

END OF DOCUMENT

APPENDIX C-3

**Allowable General Condition Costs
Construction Phase Scope Detail**

Project (On Site Jobsite Staff)		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Operations Manager		X		
2	Project Manager		X		
3	Project Superintendent		X		
4	Project Engineer		X		
5	Home Office Engineer		X		
6	Scheduling Engineer		X		
7	Field Engineer		X		
8	Draftsman/Detailer		X		
9	Record Drawings		X		
10	Field Accountant		X		
11	Timekeeper/Checker		X		
12	Secretarial/Clerk Typist		X		
13	Independent Surveyor	X			
14	Safety &. E.E.O. officer		X		
15	Runner/Water Boy		X		
16	Vacation Time/Job Site Staff		X		
17	Sick Leave/Job Site Staff		X		
18	Bonuses/Job Site Staff			X	
19	Quality Control Program		X		
20	Qualified SWPPP Practitioner (QSP)	X			
21	SWPPP Creation, Approval, Notifications	X			

Temporary Utilities		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Telephone Installation		X		
2	Telephone Monthly Charges		X		
3	Elect Power Installation	X			
4	Elect Power Distribution - Wiring/Spider boxes/ Lighting for construction	X			

5	Elect Power Monthly Charges				X
6	Water Service for construction	X			
7	Heating & Cooling Costs for construction	X			
8	Light Bulbs & Misc. Supplies for construction	X			
9	Clean-Up-Periodical	X			
10	Clean-Up-Final	X			
11	Dump Permits and Fees	X			
12	Recycling/Trash Dumpster Removal/Hauling	X			
13	Flagger/Traffic Control	X			
14	Dust Control	X			
15	Temporary Road and Maintenance if required	X			
16	Trash Chute & Hopper (if applicable)	X			

Direct Job Costs		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Wages of Construction Labor	X			
2	Labor/Fringe Benefits & Burden	X			
3	Subcontract Costs	X			
4	Material & Equipment/Included		X		
	a. Contractor Owned Equip, trucks		X		
	b. Small Tools - Purchase		X		
	c. Small Tools - Rental		X		
5	Warranty Work & Coordination			X	

Temporary Facilities		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Office Trailer including shared office for IOR & CM (office must include lockable door, 2 desks, 2 chairs, 1 file cabinet, and Wi-Fi connection)		X		
2	Storage Trailer & Tool Shed Rental		X		
3	Office Furniture/Equip/computers		X		
4	Xerox Copies/Misc. Printing		X		
5	Postage/UPS/FedEx		X		

6	Project Photographs		X		
7	Temporary Toilets		X		
8	Project Sign		X		
9	Temporary Fencing/Enclosures		X		
10	Covered Walkways if required	X			
11	Barricades	X			
12	Temporary Stairs	X			
13	Opening Protection	X			
14	Safety Railing & Nets	X			
15	Drinking Water/Cooler/Cup		X		
16	Safety/First Aid Supplies		X		
17	Fire Fighting Equipment		X		
18	Security Guards		X		
19	Watchman Service		X		
20	Phone/fax lines, cell phones, Wi-Fi		X		
21	Temporary "Swing space" portables to house teachers and students as required for phasing				X
22	Utility connections and civil work needed for temporary "swing space" portables as required for phasing	X			

Miscellaneous Project Costs		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Performance and Payment Bonds				
2	Developer-provided insurance				
3	Printing - Drwgs & Specs (Max of 15 sets)				X
4	Initial Soils Investigation				X
5	Testing and Inspection				X
6	Maintenance After Occupancy				X
7	Facility Operator/Training	X			
8	Fees				X

Hoisting		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Hoist & Tower Rental	X			
2	Hoist Landing & Fronts	X			
3	Hoist Operator	X			
4	Hoist Safety Inspections	X			
5	Hoist Material Skips/Hoppers	X			
6	Erect & Dismantle Hoists	X			
7	Crane Rental	X			
8	Crane Operators	X			
9	Crane Safety Inspections	X			
10	Erect & Dismantle Crane	X			
11	Fuel, Repairs, Maintenance	X			
12	Crane Raising/Jumping Costs	X			
13	Safety Inspections	X			
14	Forklift Rental	X			
15	Forklift Operator	X			
16	Forklift Safety Inspections	X			
17	Fuel, Repairs, Maintenance	X			

Contractor's Main Office Staff		Direct Cost of the Work	General Conditions	Overhead and Profit	Paid by District
1	Corporate Executives			X	
2	Principal in Charge			X	
3	Estimating Cost Engineering			X	
4	Value Engineering			X	
5	Scheduling			X	
6	Drafting and Detailing			X	
7	Purchasing & Contracts			X	
8	Accounting & Bookkeeping			X	
9	Safety & E.E.O Officer			X	
10	Secretarial			X	
11	Clerk/Typist			X	
12	Computer/Data Processing			X	
13	Legal (General Services/Pertaining to Project)			X	
14	Travel & Subsistence			X	
15	Fringe Benefits & Burden			X	
16	Vacation Time/Main Office			X	
17	Bonuses/Main Office			X	
General Conditions Total Cost transfer to Fee Proposal			\$		