

AGENDA OF THE MEASURE BB OVERSIGHT COMMITTEE

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

325 S. Peck Ave., Manhattan Beach, CA 90266

October 10, 2011

7:00 p.m.

In compliance with the Americans with Disabilities Act, for those requiring special assistance to access the Committee meeting room, to access written documents being discussed at the Committee meeting, or to otherwise participate at Committee meetings, please contact the Board Secretary, Nancy Bogart, at 310-318-7345, ext. 5902, for assistance. Notification at least 48 hours before the meeting will enable the District to make reasonable arrangements to ensure accessibility to the Committee meeting and to provide any required accommodations, auxiliary aids or services.

Writings related to a Committee meeting agenda item that are distributed to at least a majority of Committee members less than 72 hours before a noticed meeting, and that are public records not otherwise exempt from disclosure, will be available for inspection at the District office, 325 S. Peck Avenue, Manhattan Beach, CA 90266. Such writings may also be available on the District's website. (Government Code §54957.5 (b)).

A. CALL TO ORDER

1. Call to Order
2. Pledge of Allegiance

B. ANNOUNCEMENTS AND COMMUNICATIONS

1. Public Comment Regarding Agenda
The purpose of this section is to permit any person in the audience to make a statement to the Committee on items on the Agenda. Persons are limited to three (3) minutes for their communication, unless the Committee deems otherwise. The Chairman will conclude the Public Comment after a reasonable length of time and proceed with the Agenda. The Chairman may, at its discretion, permit statements on items not on the Agenda, but pertaining to the District, if appropriate and not an impediment to the efficiency and orderliness of the meeting; however, no action shall be taken on any item not appearing on the Agenda.

C. PRESENTATION/DISCUSSION

- Pg 1-7
1. Report by District of Detailed Measure BB Expenditures
 2. DSA Final Approval Update
- Pg 8-182
3. Lease Lease Back Contract Documents for Comment

D. COMMITTEE BUSINESS

Pg 183-185 1. Approval of April 11, 2011 Bond Oversight Committee Minutes.

E. PUBLIC COMMENTS

As a courtesy, please complete the Public Comment card and give it to the Recorder before the beginning of this meeting. You will have three (3) minutes to speak.

F. ITEMS FOR FUTURE MEETINGS

G. ADJOURNMENT

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

CUMULATIVE BOND EXPENDITURES BY MAJOR CATEGORY

1 Expenditures by Major Category	Revised Budget	Expenditures	Estimate	Comments
2		As of 9-30-11		
3 Other Professional Services	\$ 82,000	\$ 81,147	98%	Evaluation scope of site and facilities expanded by DSA comments, now complete
4 Architects	\$ 3,300,000	\$ 2,494,513	76%	Largest Components remaining, DSA, budget, construction administration
5 Regulatory Fees	\$ 197,000	\$ 187,500	95%	Fees remaining, DSA back check
6 Construction Manager*	\$ 255,000	\$ 236,393	93%	CM contract terminated as of 3-31-11. Bernards now LLB contractor.
7 Engineers and Consultants	\$ 290,000	\$ 443,023	153%	Additional services usually comes with modernization components
8 Total	<u>\$ 4,124,000</u>	<u>\$ 3,442,576</u>		

9
10 construction manager contract terminated 3/31/11

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

journ_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
								Other Professional Services
20081205	20081206	08-09	-	293.90	16812	Daily Breeze		21.0-09000.0-00000-85000-5830-9000000
20081208	20081209	08-09	293.90	(293.90)	16812	Daily Breeze	SEF8819	21.0-09000.0-00000-85000-5830-9000000
20090504	20090507	08-09	6,303.85			Miller Brown & Dannis	SEK4916	21.0-09000.0-00000-85000-6235-0000000
20090603	20090605	08-09	8,052.66			Miller Brown & Dannis	SEL398	21.0-09000.0-00000-85000-6235-9000000
20090903	20090904	09-10	-	340.00	17859	Beach Reporter, The		21.0-09000.0-00000-85000-5830-9000000
20090903	20090904	09-10	-	493.88	17860	Easy Reader, Inc.		21.0-09000.0-00000-85000-5830-9000000
20090903	20090919	09-10	-	(43.88)	17860	Easy Reader, Inc.		21.0-09000.0-00000-85000-5830-9000000
20090917	20090918	09-10	225.00	(450.00)	17860	Easy Reader, Inc.	SEC17915	21.0-09000.0-00000-85000-5830-9000000
20090917	20090918	09-10	225.00			Easy Reader, Inc.	SEC17916	21.0-09000.0-00000-85000-5830-9000000
20091005	20091006	09-10	-	170.00	17952	Beach Reporter, The		21.0-09000.0-00000-85000-5830-9000000
20091005	20091006	09-10	-	450.00	17951	Easy Reader, Inc.		21.0-09000.0-00000-85000-5830-9000000
20091006	20091007	09-10	225.00	(450.00)	17951	Easy Reader, Inc.	SED694	21.0-09000.0-00000-85000-5830-9000000
20091006	20091007	09-10	225.00			Easy Reader, Inc.	SED695	21.0-09000.0-00000-85000-5830-9000000
20091006	20091007	09-10	340.00	(340.00)	17859	Beach Reporter, The	SED6926	21.0-09000.0-00000-85000-5830-9000000
20091103	20091107	09-10	1,063.34			Miller Brown & Dannis	SEE391	21.0-09000.0-00000-85000-6235-0000000
20091105	20091106	09-10	170.00	(170.00)	17952	Beach Reporter, The	SEE5918	21.0-09000.0-00000-85000-5830-9000000
20091208	20091215	09-10	3,108.81			Miller Brown & Dannis	SEF8953	21.0-09000.0-00000-85000-6235-0000000
			20,232.56					
								Architects
20090923	20090924	09-10	-	105,000.00	17922	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20090924	20091002	09-10	16,798.91			Harley Ellis Devereaux	SEC2499	21.0-09000.0-00000-85000-6210-9000000
20090924	20091002	09-10	20,063.25	(67,158.91)	17922	Harley Ellis Devereaux	SEC2497	21.0-09000.0-00000-85000-6210-9000000
20090924	20091002	09-10	30,296.75			Harley Ellis Devereaux	SEC2498	21.0-09000.0-00000-85000-6210-9000000
20091102	20091107	09-10	25,020.90	(25,020.90)	17922	Harley Ellis Devereaux	SEE2911	21.0-09000.0-00000-85000-6210-9000000
			92,179.81					
December 31, 2009			112,412					
								Other Professional Services
20100112	20100116	09-10	8,325.00			Miller Brown & Dannis	SEG12960	21.0-09000.0-00000-85000-6235-0000000
20100208	20100211	09-10	3,174.50			Miller Brown & Dannis	SH81015	21.0-09000.0-00000-85000-6235-0000000
20100223	20100227	09-10	4,519.00			Miller Brown & Dannis	SH231030	21.0-09000.0-00000-85000-6235-0000000
20100330	20100402	09-10	3,149.23			Miller Brown & Dannis	SI30103	21.0-09000.0-00000-85000-6235-0000000
20100420	20100424	09-10	4,506.52			Dannis Woliver Kelley	SJ201012	21.0-09000.0-00000-85000-6235-0000000
20100527	20100602	09-10	3,846.66			Dannis Woliver Kelley	SK271023	21.0-09000.0-00000-85000-6235-0000000
20100618	20100623	09-10	1,120.24			Dannis Woliver Kelley	SL181041	21.0-09000.0-00000-85000-6235-0000000
			28,641.15					
								Architects
20100107	20100112	09-10	10,896.42	(10,875.52)	17922	Harley Ellis Devereaux	SEG7918	21.0-09000.0-00000-85000-6210-9000000
20100310	20100311	09-10	-	310,048.00	17922-1	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20100311	20100318	09-10	30,525.80	(30,525.80)	17922-1	Harley Ellis Devereaux	SI111025	21.0-09000.0-00000-85000-6210-9000000
20100416	20100421	09-10	122,229.20	(122,229.20)	17922-1	Harley Ellis Devereaux	SJ161067	21.0-09000.0-00000-85000-6210-9000000
20100517	20100519	09-10	76,680.12	(76,680.12)	17922-1	Harley Ellis Devereaux	SK17107	21.0-09000.0-00000-85000-6210-9000000
20100608	20100611	09-10	76,702.48	(76,702.48)	17922-1	Harley Ellis Devereaux	SL81056	21.0-09000.0-00000-85000-6210-9000000
20100601	20100724	09-10	-	(1,944.67)	17922	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20100608	20100724	09-10	-	(3,910.40)	17922-1	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
			317,034.02					

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

journ_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
								Engineers, Consultants and IOR
20100419	20100420	09-10	-	5,000.00	B10-003	Psomas		21.0-09200.0-00000-85000-6270-9000000
20100419	20100420	09-10	-	7,500.00	B10-003	Psomas		21.0-09100.0-00000-85000-6270-9000000
20100419	20100420	09-10	-	19,500.00	B10-003	Psomas		21.0-09000.0-00000-85000-6270-9000000
20100420	20100421	09-10	-	2,600.00	B10-001	Geotechnologies, Inc		21.0-09800.0-00000-85000-6270-9000000
20100420	20100421	09-10	-	3,900.00	B10-001	Geotechnologies, Inc		21.0-09200.0-00000-85000-6270-9000000
20100420	20100421	09-10	-	6,500.00	B10-001	Geotechnologies, Inc		21.0-09100.0-00000-85000-6270-9000000
20100420	20100421	09-10	-	10,560.00	B10-002	KOA Corporation		21.0-09000.0-00000-85000-6270-9000000
20100422	20100423	09-10	-	17,400.00	B10-104	American Air Balance Co		21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	360.00		B10-104	American Air Balance Co	SJ281011	21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	560.00		B10-104	American Air Balance Co	SJ281010	21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	820.00	(17,400.00)	B10-104	American Air Balance Co	SJ28109	21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	3,240.00		B10-104	American Air Balance Co	SJ28108	21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	5,040.00		B10-104	American Air Balance Co	SJ28107	21.0-09200.0-00000-85000-6270-9000000
20100428	20100505	09-10	7,380.00		B10-104	American Air Balance Co	SJ28106	21.0-09200.0-00000-85000-6270-9000000
20100501	20100609	09-10	-	3,710.00	B10-002	KOA Corporation		21.0-09000.0-00000-85000-6270-9000000
20100517	20100526	09-10	2,600.00			Geotechnologies, Inc	SK17106	21.0-09800.0-00000-85000-6270-9000000
20100517	20100526	09-10	3,900.00	(3,900.00)	B10-001	Geotechnologies, Inc	SK17106	21.0-09200.0-00000-85000-6270-9000000
20100517	20100526	09-10	6,500.00			Geotechnologies, Inc	SK17106	21.0-09100.0-00000-85000-6270-9000000
20100517	20100526	09-10	-	(6,500.00)	B10-001	Geotechnologies, Inc		21.0-09100.0-00000-85000-6270-9000000
20100517	20100526	09-10	-	(2,600.00)	B10-001	Geotechnologies, Inc		21.0-09800.0-00000-85000-6270-9000000
20100520	20100526	09-10	5,400.00			Psomas	SK20103	21.0-09100.0-00000-85000-6270-9000000
20100520	20100526	09-10	5,910.00	(5,910.00)	B10-002	KOA Corporation	SK20102	21.0-09000.0-00000-85000-6270-9000000
20100520	20100526	09-10	10,250.00	(10,250.00)	B10-003	Psomas	SK20103	21.0-09000.0-00000-85000-6270-9000000
20100520	20100526	09-10	-	(5,400.00)	B10-003	Psomas		21.0-09100.0-00000-85000-6270-9000000
20100527	20100602	09-10	2,100.00			Psomas	RP0E27-1	21.0-09100.0-00000-85000-6270-9000000
20100527	20100602	09-10	5,000.00	(5,000.00)	B10-003	Psomas	RP0E27-1	21.0-09200.0-00000-85000-6270-9000000
20100527	20100602	09-10	9,250.00	(9,250.00)	B10-003	Psomas	RP0E27-1	21.0-09000.0-00000-85000-6270-9000000
20100527	20100602	09-10	-	(2,100.00)	B10-003	Psomas		21.0-09100.0-00000-85000-6270-9000000
20100630	20100703	09-10	4,050.00	(4,050.00)	B10-002	KOA Corporation	SA1105	21.0-09000.0-00000-85000-6270-9000000
20100601	20100724	09-10	-	(3,710.00)	B10-002	KOA Corporation		21.0-09000.0-00000-85000-6270-9000000
20100601	20100724	09-10	-	(600.00)	B10-002	KOA Corporation		21.0-09000.0-00000-85000-6270-9000000
			72,360.00					
1/1/2010 - 6/30/2010			418,035					
Cumulative			530,448					
								Architects
20100913	20100917	10-11	228,914.63		B11-006	Harley Ellis Devereaux	SC105	21.0-09000.0-00000-85000-6210-9000000
20100913	20100917	10-11	114,681.48		B11-006	Harley Ellis Devereaux	SC13106	21.0-09000.0-00000-85000-6210-9000000
			343,596.11					
								Engineers, Consultants and IOR
20100726	20100728	10-11	24,640.00		B11-05	Psomas	SA26109	21.0-09100.0-00000-85000-6270-9000000
20100825	20100901	10-11	23,233.00		B11-007	Bernards	SB251029	21.0-09000.0-00000-85000-6250-9000000
20100728	20100730	10-11	36,960.00		B11-05	Psomas	SA28104	21.0-09100.0-00000-85000-6270-9000000
20100825	20100901	10-11	23,233.00		B11-007	Bernards	SB251029	21.0-09000.0-00000-85000-6250-9000000
			108,066.00					
Audited 1/1/2010 - 6/30/2010			869,697.28					
Audited Cumulative			982,109.65					

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

journ_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
			\$ -					Other Professional Services
								Architects
20100707	20100708	10-11	-	1,987,812.00	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20100913	20100917	10-11	-	(435,747.71)	B11-006	Harley Ellis Devereaux	SC105	21.0-09000.0-00000-85000-6210-9000000
20100913	20100914	10-11	-	5,000.00	18817	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20100913	20100917	10-11	92,151.60		B11-006	Harley Ellis Devereaux	SC13107	21.0-09000.0-00000-85000-6210-9000000
20100914	20100918	10-11	1,209.12	(1,209.12)	18817	Harley Ellis Devereaux	SC141086	21.0-09000.0-00000-85000-6210-9000000
20101001	20101103	10-11	-	15,000.00	18817	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20101001	20101104	10-11	-	15,000.00	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20101008	20101009	10-11	798.77	(798.77)	18817	Harley Ellis Devereaux	SD81014	21.0-09000.0-00000-85000-6210-9000000
20101008	20101009	10-11	709,831.91	(709,831.91)	B11-006	Harley Ellis Devereaux	SD81015	21.0-09000.0-00000-85000-6210-9000000
20101101	20101209	10-11	-	19,500.00	18817	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20101103	20101106	10-11	8,196.19	(8,196.19)	18817	Harley Ellis Devereaux	SE31042	21.0-09000.0-00000-85000-6210-9000000
20101104	20101109	10-11	622,954.90	(622,954.90)	B11-006	Harley Ellis Devereaux	SE4103A	21.0-09000.0-00000-85000-6210-9000000
20101209	20101215	10-11	10,109.58	(10,109.58)	18817	Harley Ellis Devereaux	SF9108	21.0-09000.0-00000-85000-6210-9000000
20101210	20101216	10-11	5,851.91	(5,851.91)	B11-006	Harley Ellis Devereaux	SF101017	21.0-09000.0-00000-85000-6210-9000000
			1,451,103.98					
								Regulatory Fees
20101028	20101102	10-11	5,400.00			Division of the State Architect	RP0J28-5	21.0-09200.0-00000-85000-6235-9000000
20101028	20101102	10-11	5,500.00			Division of the State Architect	RP0J28-6	21.0-09300.0-00000-85000-6235-9000000
20101028	20101102	10-11	8,200.00			Division of the State Architect	RP0J28-4	21.0-09100.0-00000-85000-6235-9000000
20101028	20101102	10-11	22,000.00			Division of the State Architect	RP0J28-2	21.0-09200.0-00000-85000-6235-9000000
20101028	20101102	10-11	49,500.00			Division of the State Architect	RP0J28-3	21.0-09300.0-00000-85000-6235-9000000
20101028	20101102	10-11	92,000.00			Division of the State Architect	RP0J28-1	21.0-09100.0-00000-85000-6235-9000000
			183,600.00					
								Construction Manager
20100823	20100824	10-11	-	302,029.00	B11-007	Bernards		21.0-09000.0-00000-85000-6250-9000000
20100825	20100901	10-11	23,233.00 Jul		B11-007	Bernards	SB251029	21.0-09000.0-00000-85000-6250-9000000
20100825	20100901	10-11	-	(69,699.00)	B11-007	Bernards	SB251029	21.0-09000.0-00000-85000-6250-9000000
20100929	20101002	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SC291023	21.0-09000.0-00000-85000-6250-9000000
20101015	20101021	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SD151010	21.0-09000.0-00000-85000-6250-9000000
20101118	20101123	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SE18103	21.0-09000.0-00000-85000-6250-9000000
			92,932.00					
								Engineers and Consultants
20100707	20100708	10-11	-	70,400.00	B11-05	Psomas		21.0-09100.0-00000-85000-6270-9000000
20100726	20100728	10-11	-	(24,640.00)	B11-05	Psomas	SA26109	21.0-09100.0-00000-85000-6270-9000000
20100728	20100730	10-11	-	(36,960.00)	B11-05	Psomas	SA28104	21.0-09100.0-00000-85000-6270-9000000
20100913	20100917	10-11	3,568.00	(3,568.00)	B11-002	KOA Corporation	SC13104	21.0-09000.0-00000-85000-6270-9000000
20100913	20100917	10-11	-	4,310.00	B11-002	KOA Corporation		21.0-09000.0-00000-85000-6270-9000000
20100920	20100924	10-11	742.00	(742.00)	B11-002	KOA Corporation	SC201017	21.0-09000.0-00000-85000-6270-9000000
20100927	20100928	10-11	-	43,805.04	18866	NIC Partners		21.0-09600.0-00000-83000-6410-9000000
20101118	20101119	10-11	-	3,600.00	B11-009	California Geological Survey		21.0-09100.0-00000-85000-5890-9000000
20101119	20101120	10-11	3,600.00	(3,600.00)	B11-009	California Geological Survey	SE191010	21.0-09100.0-00000-85000-5890-9000000
20101208	20101209	10-11	-	6,694.30	19020	NIC Partners		21.0-09600.0-00000-85000-5630-9000000
			7,910.00					
7/1/2010 - 12/31/2010			1,735,546					
			Cumulative \$ 2,717,656					

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

journ_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
Other Professional Services								
20110329	20110402	10-11	3,329.50			Dannis Woliver Kelley	SI291135	21.0-09000.0-00000-85000-5820-9000000
20110331	20110408	10-11	3,101.70			Dannis Woliver Kelley	SH24114	21.0-09000.0-00000-85000-6235-0000000
20110331	20110408	10-11	2,219.70			Dannis Woliver Kelley	SG3101	21.0-09000.0-00000-85000-6235-0000000
			8,650.90					
Architects								
20110101	20110203	10-11	-	47,300.00	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110209	20110215	10-11	844.80		B11-006	Harley Ellis Devereaux	SH91115	21.0-09000.0-00000-85000-6210-9000000
20110209	20110215	10-11	16,434.68	(17,279.48)	B11-006	Harley Ellis Devereaux	SH91114	21.0-09000.0-00000-85000-6210-9000000
20110223	20110226	10-11	3,606.92	(3,606.92)	18817	Harley Ellis Devereaux	SH23111	21.0-09000.0-00000-85000-6210-9000000
20110302	20110304	10-11	506.55	(837.29)	B11-006	Harley Ellis Devereaux	SI21138	21.0-09000.0-00000-85000-6210-9000000
20110302	20110304	10-11	837.29	(506.55)	18817	Harley Ellis Devereaux	SI21139	21.0-09000.0-00000-85000-6210-9000000
20110318	20110324	10-11	5,247.51	(5,247.51)	18817	Harley Ellis Devereaux	SI181117	21.0-09000.0-00000-85000-6210-9000000
20110322	20110326	10-11	985.32	(985.32)	B11-006	Harley Ellis Devereaux	SI22111	21.0-09000.0-00000-85000-6210-9000000
20110401	20110505	10-11	-	5,000.00	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110401	20110505	10-11	-	57,265.00	B11-006	Harley Ellis Devereaux		21.0-09100.0-00000-85000-6210-9000000
			28,463.07					
Regulatory Fees								
20110425	20110426	10-11	-	1,950.00	B11-019	DSA/MBUSD Revolving Cash Fund		21.0-09000.0-00000-85000-6250-9000000
20110426	20110505	10-11	1,950.00	(1,950.00)	B11-019	DSA/MBUSD Revolving Cash Fund	SJ261114	21.0-09000.0-00000-85000-6250-9000000
			1,950.00					
Construction Manager								
20110103	20110107	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SG3102	21.0-09000.0-00000-85000-6250-9000000
20110125	20110128	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SG251136	21.0-09000.0-00000-85000-6250-9000000
20110210	20110215	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SH10111	21.0-09000.0-00000-85000-6250-9000000
20110317	20110319	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SI17118	21.0-09000.0-00000-85000-6250-9000000
20110415	20110421	10-11	23,233.00	(23,233.00)	B11-007	Bernards	SJ151187	21.0-09000.0-00000-85000-6250-9000000
			116,165.00					
Engineers, Consultants, IOR								
20110121	20110122	10-11	-	104,028.00	B11-008-0	Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110124	20110128	10-11	7,085.68	(7,085.68)	B11-008-0	Sandy Pringle	SG241119	21.0-09000.0-00000-85000-6280-9000000
20110207	20110208	10-11	6,694.30	(6,694.30)	19020	NIC Partners	SH7114	21.0-09600.0-00000-85000-5630-9000000
20110207	20110211	10-11	43,805.04	(43,805.04)	18866	NIC Partners	SH7113	21.0-09600.0-00000-83000-6410-9000000
20110223	20110301	10-11	1,193.92	(1,193.92)	B11-008-0	Sandy Pringle	SH231113	21.0-09000.0-00000-85000-6280-9000000
20110317	20110319	10-11	826.56	(826.56)	B11-008-0	Sandy Pringle	SI17119	21.0-09000.0-00000-85000-6280-9000000
20110323	20110324	10-11	-	5,234.00	B11-108	Aragon Construction, Inc.		21.0-09600.0-00000-85000-5630-9000000
20110323	20110324	10-11	-	4,500.00	19177	Geotechnologies, Inc		21.0-09200.0-00000-85000-6170-9000000
20110323	20110324	10-11	-	14,975.00	19174	State Electric		21.0-09600.0-00000-85000-5630-9000000
20110325	20110326	10-11	14,975.00	(14,975.00)	19174	State Electric	SI251120	21.0-09600.0-00000-85000-5630-9000000
20110411	20110412	10-11	5,234.00	(5,234.00)	B11-108	Aragon Construction, Inc.	SJ111117	21.0-09600.0-00000-85000-5630-9000000
20110415	20110421	10-11	367.36	(367.36)	B11-008-0	Sandy Pringle	SJ151194	21.0-09000.0-00000-85000-6280-9000000
20110419	20110422	10-11	4,500.00	(4,500.00)	19177	Geotechnologies, Inc	SJ191119	21.0-09200.0-00000-85000-6170-9000000
20110422	20110422	10-11	-	14,750.00	19221	T.C. Security & Fire Alarm Systems		21.0-09600.0-00000-85000-5630-9000000
20110425	20110426	10-11	14,750.00	(14,750.00)	19221	T.C. Security & Fire Alarm Systems	SJ251117	21.0-09600.0-00000-85000-5630-9000000
			99,431.86					
1/1/2011 - 4/30/2011			\$ 254,661					
Cumulative			\$ 2,972,316					

journ_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
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MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

journal_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
other professional services								
20110519	20110524	10-11	4,089.00			Dannis Woliver Kelley	SK19111	21.0-09000.0-00000-85000-5820-9000000
20110519	20110524	10-11	6,480.50			Dannis Woliver Kelley	SK19112	21.0-09000.0-00000-85000-5820-9000000
20110628	20110701	10-11	2,650.00			Dannis Woliver Kelley	SL281156	21.0-09000.0-00000-85000-5820-9000000
20110628	20110701	10-11	783.02			Dannis Woliver Kelley	SL281155	21.0-09000.0-00000-85000-5820-9000000
			<u>14,002.52</u>					
architects								
20110505	20110510	10-11	2,503.05	(2,503.05)	18817	Harley Ellis Devereaux	SK51132	21.0-09000.0-00000-85000-6210-9000000
20110505	20110510	10-11	43,476.48	(43,476.48)	B11-006	Harley Ellis Devereaux	SK51133	21.0-09000.0-00000-85000-6210-9000000
20110505	20110510	10-11	57,265.00	(57,265.00)	B11-006	Harley Ellis Devereaux	SK51133	21.0-09100.0-00000-85000-6210-9000000
20110613	20110617	10-11	-			Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110613	20110617	10-11	4,462.43	(4,462.43)	18817	Harley Ellis Devereaux	SL131111	21.0-09000.0-00000-85000-6210-9000000
20110623	20110628	10-11	-	(15,474.79)	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110623	20110628	10-11	-			Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110623	20110628	10-11	862.06		B11-006	Harley Ellis Devereaux	SL23111	21.0-09000.0-00000-85000-6210-9000000
20110623	20110628	10-11	14,612.73		B11-006	Harley Ellis Devereaux	SL23112	21.0-09000.0-00000-85000-6210-9000000
20110623	20110628	10-11	1,771.41	(1,771.41)	18817	Harley Ellis Devereaux	SL23113	21.0-09000.0-00000-85000-6210-9000000
20110601	20110723	10-11	-	(184,524.00)	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110623	20110723	10-11	-	(1,088.47)	18817	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110623	20110723	10-11	-	(18,148.21)	B11-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110630	20110817	10-11	464.57		B11-006	HED, inv 947695	1011AP	21.0-09000.0-00000-85000-6210-9000000
			<u>125,417.73</u>					
regulatory fees								
20110516	20110517	10-11	-	20,526.67	B11-020	Division of the State Architect		21.0-09000.0-00000-85000-6250-9000000
20110517	20110520	10-11	20,526.67	(20,526.67)	B11-020	Division of the State Architect	SK171116	21.0-09000.0-00000-85000-6250-9000000
			<u>20,526.67</u>					
construction manager								
20110601	20110723	10-11	-	(46,466.00)	B11-007	Bernards		21.0-09000.0-00000-85000-6250-9000000
20110630	20110817	10-11	5,960.00		B11-007	June, Bernards	1011AP	21.0-09000.0-00000-85000-6250-9000000
20110630	20110817	10-11	3,520.00		B11-007	May, Bernards	1011AP	21.0-09000.0-00000-85000-6250-9000000
			<u>9,480.00</u>					
engineers, consultants, IOR								
20110501	20110601	10-11	0	1,836.80	B11-008-0	Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110505	20110511	10-11	50.00			Robin D Page	SK51138	21.0-09000.0-00000-85000-6250-9000000
20110531	20110607	10-11	-			Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110531	20110607	10-11	459.20	(459.20)	B11-008-0	Sandy Pringle	SK311110	21.0-09000.0-00000-85000-6280-9000000
20110601	20110607	10-11	-			Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110601	20110607	10-11	1,836.80	(1,836.80)	B11-008-0	Sandy Pringle	SL11125	21.0-09000.0-00000-85000-6280-9000000
20110615	20110617	10-11	-			Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110615	20110617	10-11	459.20	(459.20)	B11-008-0	Sandy Pringle	SL151114	21.0-09000.0-00000-85000-6280-9000000
20110630	20110719	10-11	10,760.00			William F. Burch	SA181120	21.0-09100.0-00000-85000-5890-9000000
20110630	20110721	10-11	251.44			Daily Breeze	SA201118	21.0-09100.0-00000-85000-5830-9000000
20110601	20110723	10-11	-	(8,800.00)	B11-05	Psomas		21.0-09100.0-00000-85000-6270-9000000
20110615	20110723	10-11	-	(93,636.08)	B11-008-0	Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110630	20110817	10-11	6,518.39			SA191129, Sandy Pringle	1011AP	21.0-09000.0-00000-85000-6280-9000000
			<u>20335.03</u>					
			<u>189,762</u>					
5/1/11 to 6/30/11'			189,762					
Cummulative			3,162,078					

journal_date	post_date	fy	Expenditures	Purchase Orders	po_id	vendor_name	trans_ref	account_no
other professional services								

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

FUND 21 - MEASURE BB CONSTRUCTION EXPENSES FROM 7-1-10 THRU 4-30-11

20110809	20110810	11-12	-	125.79	19563	Daily Breeze		21.0-09100.0-00000-85000-6250-9000000
20110810	20110817	11-12	125.79	(125.79)	19563	Daily Breeze	SB101110	21.0-09100.0-00000-85000-6250-9000000
20110825	20110901	11-12	2,751.00			Dannis Woliver Kelley	SB25111	21.0-09000.0-00000-85000-5820-9000000
20110825	20110901	11-12	4,353.50			Dannis Woliver Kelley	SB251115	21.0-09000.0-00000-85000-5820-9000000
20110927	20110930	11-12	2,391.00			Dannis Woliver Kelley	SC271112	21.0-09000.0-00000-85000-5820-9000000
			<u>9,621.29</u>					
architects								
20110809	20110810	11-12	-	5,540.00	B12-022	William F. Burch		21.0-09100.0-00000-85000-6210-9000000
20110811	20110818	11-12	3,399.46	(3,399.46)	B12-022	William F. Burch	SB111111	21.0-09100.0-00000-85000-6210-9000000
20110831	20110901	11-12	-	973,068.76	B12-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110831	20110916	11-12	-	41,400.00	B12-006	Harley Ellis Devereaux		21.0-09000.0-00000-85000-6210-9000000
20110901	20110907	11-12	30,313.45			Harley Ellis Devereaux	SC111120	21.0-09100.0-00000-85000-6210-9000000
20110916	20110922	11-12	83,018.14	(83,018.14)	B12-006	Harley Ellis Devereaux	SC161124	21.0-09000.0-00000-85000-6210-9000000
20110919	20110922	11-12	1,410.00	(1,410.00)	B12-022	William F. Burch	SC191117	21.0-09100.0-00000-85000-6210-9000000
			<u>118,141.05</u>					
			0					
regulatory fees								
construction manager								
20110810	20110816	11-12	17,815.91			Bernards	SB101118	21.0-09000.0-00000-85000-6250-9000000
			<u>17,815.91</u>					
engineers, consultants, IOR								
20110809	20110810	11-12	-	152,000.00	B12-021	State Electric		21.0-09100.0-00000-85000-6250-9000000
20110823	20110824	11-12	-	179,000.00	B12-023	Sandy Pringle		21.0-09000.0-00000-85000-6280-9000000
20110824	20110831	11-12	9,878.70	(9,878.70)	B12-023	Sandy Pringle	SB241116	21.0-09000.0-00000-85000-6280-9000000
20110825	20110901	11-12	38,205.00	(38,205.00)	B12-021	State Electric	SB251116	21.0-09100.0-00000-85000-6250-9000000
20110831	20110901	11-12	-	7,850.00	19571	Spectrum Geophysics		21.0-09000.0-00000-85000-6270-9000000
20110901	20110902	11-12	-	31,000.00	B12-024	Steve Romines		21.0-09000.0-00000-85000-5850-9000000
20110901	20110909	11-12	83,700.00	(83,700.00)	B12-021	State Electric	SC111119	21.0-09100.0-00000-85000-6250-9000000
20110920	20110927	11-12	3,136.50	(3,136.50)	B12-023	Sandy Pringle	SC201113	21.0-09000.0-00000-85000-6280-9000000
			<u>134,920.20</u>					
	7/1/11-9/30/11		280,498.45					
	Cummulative		3,442,576.86					

WHEN RECORDED RETURN TO:

Manhattan Beach Unified School District
325 South Peck Ave.
Manhattan Beach, California 90266
Attention: Steve Romines

WITH A COPY TO:

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall

This document is recorded for the benefit of the Manhattan Beach Unified School District, and recording fee(s) are exempt under Government Code section 6103.

FACILITIES LEASE

For all or a portion of the following Project Site:

Mira Costa High School
1401 Artesia Boulevard
Manhattan Beach, CA 90266

By and between

Manhattan Beach Unified School District
325 South Peck Ave.
Manhattan Beach, California 90266
Attention: Steve Romines

And

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall

Dated as of September __, 2011

FACILITIES LEASE

This facilities lease ("Facilities Lease"), dated as of September __, 2011 ("Effective Date"), is made and entered into by and between Bernards Bros., Inc. ("Developer"), a California corporation duly organized and existing under the laws of the State of California, as Developer, and Manhattan Beach 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 owns a parcel of land particularly described in **Exhibit A** ("School Site") attached hereto and incorporated herein by reference.

WHEREAS, the District desires to provide for construction and modernization work at the School Site. ("Project");

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

WHEREAS, District and Developer have executed a Site Lease concurrently with this Facilities Lease whereby the District is leasing the Project Site to the Developer ("Site Lease"); and

WHEREAS, the Parties wish to have the Developer develop the Project and have the Project constructed on the Project Site during the time that the Developer leases the Project Site from the District under the terms of the Site Lease and subsequently lease the Project and the Project Site back to the District under the terms of this Facilities Lease; and

WHEREAS, District has retained Harley Ellis Devereaux ("Architect") to prepare plans and specifications for the Project ("Plans and Specification") which have been approved by the California Division of State Architect ("DSA"); and

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

WHEREAS, Developer has reviewed the Contract Documents, as defined below; and

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

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

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

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

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

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

- 1. Definitions.** In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.
 - 1.1. "Developer"** means Bernards Bros., Inc., a California corporation, organized and existing under the laws of the State of California, and its successors and assigns.
 - 1.2. "Developer's Representative"** means the managing member of Developer, or any person authorized to act on behalf of Developer under or with respect to this Facilities Lease.
 - 1.3. "Contract Documents"** are defined in **Exhibit D** to this Facilities Lease attached hereto and incorporated herein by reference.
 - 1.4. "District" or "Lessee"** means the Manhattan Beach Unified School District, a school district duly organized and existing under the laws of the State of California.
 - 1.5. "District Representative"** means the Superintendent of the District, or any other person authorized by the Board of 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 School Site; and

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

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

2.2. Exhibit B - Legal Description Of The Project Site And Description Of The Project: The description of the Project Site and the Project,

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

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

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

2.6. Exhibit F - Construction Schedule [To be attached when available.]

2.7. Exhibit G - Schedule of Values [To be attached when available.]

2.8. Exhibit H - Breakdown of Guaranteed Maximum Price [To be attached when available.]

2.9. Exhibit I - List of Drawings, Reports and Specifications [To be attached when available.]

3. Lease of Project and Project Site.

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

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

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

4. Term.

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

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

4.1.2. The date when Developer delivers possession of the Project to District and when all improvements to be provided by Developer are determined by the District to be completed as set forth in **Exhibit D** to this Facilities Lease.

The term of this Facilities Lease shall terminate on September 31, 2014, unless earlier terminated pursuant to the provisions of the Contract Documents. The time from the Commencement Date to the date of termination is hereby defined as the "Term".

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

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

4.3.1. An Event of Default by District as defined in Section 22 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 in Section 23 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").

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

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

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

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

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

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

6.3. Following 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.

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

6.5. District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Developer. In case of a termination for convenience, the Developer shall have no claims against the District except the actual prorated portion of the Guaranteed Maximum Price expended through the date of termination.

7. Title.

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

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

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

7.4. If the District exercises its purchase option pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** or if District makes all necessary payments under the Guaranteed Maximum Price Provisions indicated in **Exhibit C**, all right, title and interest of Developer, its assigns and successors in interest in and to the Project and the Project Site shall be transferred to and vested in the District at the time the final necessary payments are made to the Developer. 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 to the District.

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

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

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

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

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

9.4. Condemnation Proceedings.

9.4.1. 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.

9.4.2. 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 Section 6.1 of this Facilities Lease.

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

10.1. Due Organization and Existence. The Developer is a California 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.

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

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

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

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

10.6. 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:

10.6.1. Eighteen (18) months following completion of the Project,

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

While the Contract Documents are in effect, Developer shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Developer.

11. Construction Of Project

11.1. Construction of Project.

11.1.1. Developer agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferable 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 from September 1, 2011, through September 31, 2014, ("Contract Time"). The Project shall be performed pursuant to the construction schedule attached hereto as **Exhibit F** ("Construction Schedule"), which must be approved by the District prior to execution of this Facilities Lease.

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

11.1.4. **Liquidated Damages**

Time is of the essence for all work Developer must perform to complete the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Developer's delay; therefore, Developer agrees that it shall pay to the District the sum of one thousand dollars (\$1,000) per day as liquidated damages for each and every day's delay beyond the Contract Time.

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

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

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

11.1.5. **Guaranteed Maximum Price.** Developer will cause the Project to be constructed within the Guaranteed Maximum Price as set forth and defined in the Guaranteed Maximum Price Provisions indicated 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 will be handled as a modification pursuant to the provisions of **Exhibit D**.

12. Maintenance. Following delivery of possession of the Project by Developer to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Developer as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Facilities Lease.

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

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

15. Insurance. The District has elected to implement an Owner Controlled Insurance Program ("OCIP") that has been established by the Alliance of Schools for Cooperative Insurance Programs ("ASCIP") as described in **Exhibit D**, attached hereto and incorporated herein by reference. Corporation agrees to deduct any insurance-related costs from its overall construction costs and not include any insurance-related costs in the Guaranteed Maximum Price.

15.1. District's Insurance

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

15.2.2. Property Insurance. District shall at all times from and after District's acceptance of the Project, carry and maintain in force a policy of property insurance for 100% of the insurable replacement value with no coinsurance penalty, on the Project Site and the Project, together with all improvements thereon, under a standard "all risk" contract insuring against loss or damage. Developer shall be

named as additional insureds or co-insureds thereon by way of endorsement. District shall not be relieved from the obligation of supplying any additional funds for replacement of the Project and the improvements thereon in the event of destruction or damage where insurance does not cover replacement costs. District shall have the right to procure the required insurance through a joint powers agency or to self-insure against such losses or portion thereof as is deemed prudent by District.

16. Indemnification.

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

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

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

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

17. Eminent Domain.

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

17.1.1. The financial interest of Developer shall be limited to the amount of principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** for the remainder of the original Term. For example, if all of the Project and the Project Site is taken at the end of the 3rd year of the Term, Developer shall be entitled to receive from the eminent domain award the sum of all principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** that would have been owing for the 4th year through the end of the Term had there been no taking.

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

17.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Developer is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Developer shall be the pro-rata amount Developer has expended to date for work performed on the Project, as reflected by the percentage of the Guaranteed Maximum Price earned to the date of such taking by the Developer.

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

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

17.3.2. There shall be a partial reduction of any principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** to the extent that the net proceeds of any eminent domain award are applied to the prepayment of those principal payments due to Developer hereunder.

18. Damage and Destruction. If, following delivery of possession of the Project by

Developer to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** for the remainder of the original Term. Insurance proceeds from rental interruption insurance shall be paid to Developer and shall be credited toward payment of the payments payable under the Guaranteed Maximum Price Provisions detailed in **Exhibit C**.

19. Abatement.

19.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Developer have the right to demand, the Lease Payments as indicated in the Guaranteed Maximum Price 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 to the Developer as indicated in the Guaranteed Maximum Price Provisions detailed in **Exhibit C**.

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

19.3.1. Repair the Project to full use;

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

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

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

20. Access

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

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

21. Assignment, Subleasing

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

21.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Maximum Price 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. Events Of Default of District

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

22.1.1. Failure by the District to make payments required pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of thirty (30) days.

22.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of thirty (30) days after Developer provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Developer shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

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

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

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

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

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

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

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

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

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

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

23. Events Of Default of Developer

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

23.1.1.1. Developer unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence as will accomplish its completion within the

time specified or any extension thereof, or unreasonably fails to complete said work within that time;

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

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

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

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

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

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

23.2.2.1. The right to assess liquidated damages due because of any project delay;

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

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

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

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

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

24.4 If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

If to District:

Manhattan Beach Unified School District
325 South Peck Ave.
Manhattan Beach, California 90266
Attention: Steve Romines
Telephone: (310) 318 - 7345
Facsimile: (310) 303-3823

If to Developer:

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall
Telephone: (818) 898 - 1521
Facsimile: (818) 365 - 0065

With a copy to:

Samuel R. Santana, Esq.
Dannis Woliver Kelley
301 East Ocean Blvd., Suite 1750
Long Beach, CA 90802
Telephone: (562) 366-8500
Facsimile: (562) 366-8505

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

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

26.No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall no be deemed to waive any other breach hereunder.

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

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

29.Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that all payments it makes pursuant to the Guaranteed Maximum Price Provisions indicated in **Exhibit C** shall be an absolute net return to Developer, free and clear of any expenses, charges or set-offs.

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

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

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

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

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

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

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

37. Recitals Incorporated. The recitals set forth at the beginning of this Facilities Lease are hereby incorporated into this Facilities Lease's terms and provisions by this reference.

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

39. Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Facilities Lease.

40. Interpretation. Neither of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions hereof. 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 either of the Parties hereto.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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: September __, 2011

Dated: September __, 2011

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

BERNARDS BROS., INC.

By: _____
Steve Romines

By: _____
[TYPE NAME]

Title: Assistant Superintendent,
Administrative Services

Title: [INSERT TITLE]

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

State of California
County of _____

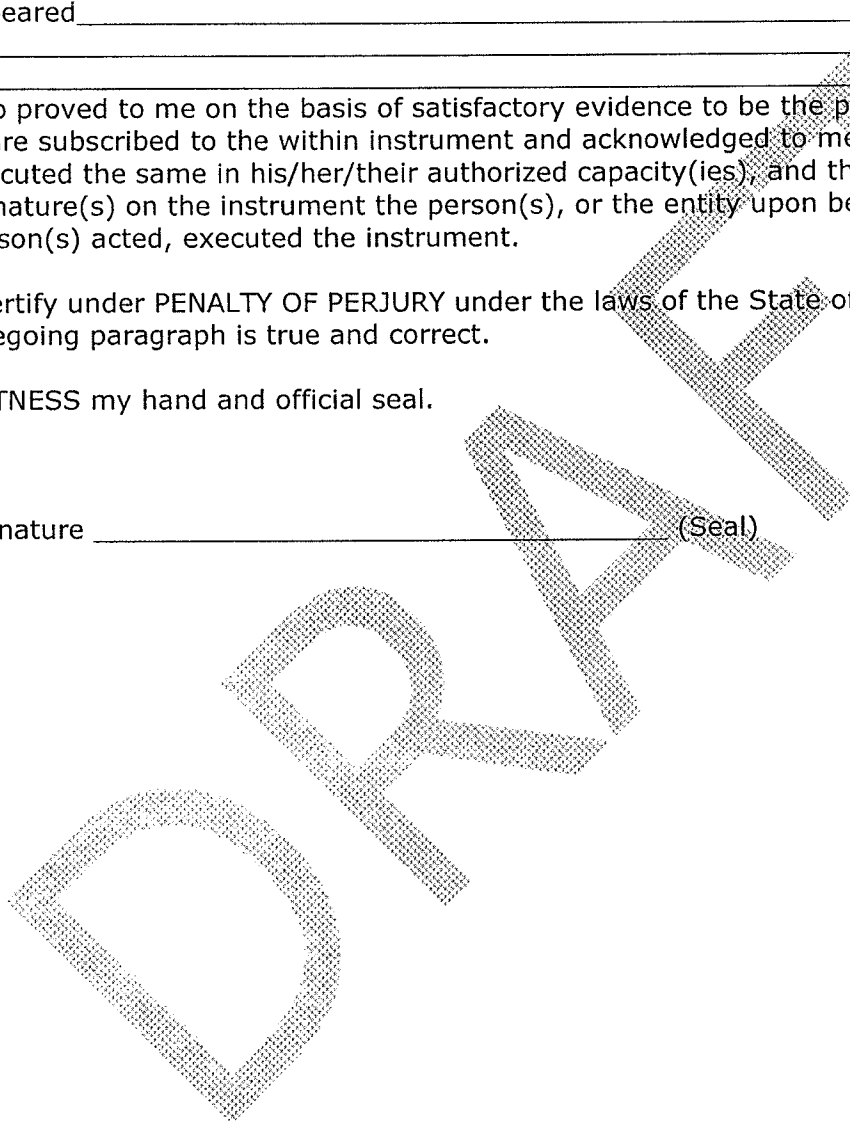
On _____ before me, (here insert name and title of the officer), personally
appeared _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

State of California
County of _____

On _____ before me, (here insert name and title of the officer), personally
appeared _____

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

DRAFT

EXHIBIT "A"

LEGAL DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Mira Costa High School
1401 Artesia Boulevard
Manhattan Beach, CA 90266

The real property is situated in the State of California, County of Los Angeles and is described as follows:

[INSERT LEGAL DESCRIPTION]

DRAFT

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

Attached is the Legal Description for portion of the School Site that is subject to this Facilities Lease and upon which Developer will construct the Project:

DRAFT

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.

DRAFT

EXHIBIT "D"

GENERAL CONSTRUCTION PROVISIONS

DRAFT

EXHIBIT "E"

MEMORANDUM OF COMMENCEMENT DATE

This MEMORANDUM OF COMMENCEMENT DATE is dated September __, and is made by and between Bernards Bros., Inc. ("Developer"), as Lessor, and the Manhattan Beach Unified School District ("District"), as Lessee.

1. Developer and District have previously entered into a Facilities Lease dated as of September __, 2011, (the "Lease") for the leasing by Developer to District of the Project Site and Project in the City of Manhattan Beach, California, referenced in the Facilities 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 of the Facilities Lease commenced on September __, 2011, and will expire at 11:59 P.M. on September 31, 2014.

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

Dated: September __, 2011

Dated: September __, 2011

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

BERNARDS BROS., INC.

By: _____
Steve Romines

By: _____
[TYPE NAME]

Title: Assistant Superintendent,
Administrative Services

Title: [INSERT 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 when available.]

DRAFT

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 when available.]

DRAFT

EXHIBIT "H"

BREAKDOWN OF GUARANTEED MAXIMUM PRICE

[To be attached when available.]

DRAFT

EXHIBIT "I"

LIST OF DRAWINGS, REPORTS AND SPECIFICATIONS

[To be attached when available.]

DRAFT

EXHIBIT C
GUARANTEED MAXIMUM PRICE AND
OTHER MAXIMUM PRICE, FUNDING, AND PAYMENT PROVISIONS

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

2. Guaranteed Maximum Price. Pursuant to the Facilities Lease, Developer will cause the Project to be constructed for _____ **Dollars (\$_____)** ("~~Guaranteed Maximum Price~~GMP"). Except as indicated herein for modifications to the Project approved by the District, Developer will not seek additional compensation from District in excess of ~~Guaranteed Maximum Price~~GMP. District shall pay the ~~Guaranteed Maximum Price~~GMP to Developer in the form of Tenant Improvement Payments and Lease Payments as indicated herein. In the event DEVELOPER and DISTRICT have entered into an Agreement for Preliminary Services for this Project, the compensation for services rendered under the Agreement for Preliminary Services will be considered part of the ~~Guaranteed Maximum Price~~GMP to be paid to DEVELOPER by DISTRICT.

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

2.2. Lease Payments. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Developer a total of _____ Dollars (\$_____) in lease payments ("~~Lease Payments~~")

2.2.1. The Lease Payments shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site.

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

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

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

3. Changes to Guaranteed Maximum Price.

3.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the ~~Guaranteed Maximum Price~~GMP. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Developer when the work is performed, or deducted from the next payment request from the Developer, as applicable.

3.2. The Parties acknowledge that the ~~Guaranteed Maximum Price~~GMP is based on the Construction Documents, including the plans, and specifications, as identified in **Exhibit D** to the Facilities Lease.

3.3. Cost Savings. Developer shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the ~~Guaranteed Maximum Price~~GMP identified by the Developer and approved in writing by the District shall be shared between the Parties with 70% going to the District and 30% going to the Developer. If approved in writing by the District, 70% of the cost savings shall be deducted from the ~~Guaranteed Maximum Price~~GMP. If any cost savings require revisions to the Construction Documents, Developer shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. Any reasonable cost incurred by District for those revisions shall be paid for out of the identified savings before it is deducted from the ~~Guaranteed Maximum Price~~GMP. Developer shall be entitled to an extension of Contract Time equal to the delay in completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

3.4. Allowances. As indicated in **Exhibit G** to the Facilities Lease, the ~~Guaranteed Maximum Price~~GMP includes the following allowances: N/A

The Parties agree that any unused allowances shall be deducted from ~~Guaranteed Maximum Price~~GMP.

4. District's Purchase Option

4.1. If the District is not then in uncured Default hereunder, the District shall have the option to purchase not less than all of the Project in its "as-is, where-is" condition and terminate this Facilities Lease and Site Lease by paying the "Total Principal Amount as Part of Lease Payment" as of the date the option is exercised ("Option Price").

4.2. District shall provide Developer no less than thirty (30) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Developer the Option Price on or prior to the Option Date and Developer shall at that time deliver to District all reasonably necessary documents in recordable form to terminate this Facilities Lease and the Site Lease. District may record all such documents at District's cost and expense.

4.3. Under no circumstances can the first Option Date be on or before thirty-five (35) days after the Developer completes the Project and the District accepts the Project.

5. Contingency

The Parties have agreed to establish a contingency fund in the amount of [\$4,206,000]. The District and Developer agree that the contingency fund is to cover unanticipated costs for estimating errors, missed scope or work not contracted for during the buyout process, insufficient staffing or General Conditions above and beyond those listed in Exhibit "H", vandalism (not covered by insurance), and/or calculation errors. The contingency fund is not to be used to cover the cost of changes to the work required by the District or resulting delay costs caused to the work or delays, suspensions or disruptions outside of the Developer's control. The Contingency fund shall not cover project schedule acceleration, changes in the scope, quality and character of the work required by the plans or revisions thereof which may entitle the Developer to an increase in the GMP. The contingency can be utilized by Developer to cover increased costs in the GMP that are a result of subcontractor proposals, defaults, and interfacing omissions between and from various work categories exceeding those listed in Exhibit "H" as well as Developer instructed schedule acceleration and/or schedule recovery by its subcontractors. The contingency fund may be utilized by either the District or the Developer; however, neither party may do so without the consent of the other. The remaining contingency balance, if any, shall be returned to the District at the time of Project completion or termination.

**"EXHIBIT "D"
TO
FACILITIES LEASE
CONSTRUCTION PROVISIONS
FOR MODERNIZATION OF MIRA COSTA HIGH SCHOOL**

By and between

**Manhattan Beach Unified School District
325 South Peck Avenue
Manhattan Beach, CA 90266
Attention: Steve Romines**

And

**Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall**

Dated as of September __, 2011

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1. **CONTRACT TERMS AND DEFINITIONS**

1.1 **Definitions**

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1 **Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.

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

1.1.3 **Architect:** The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the District's Architect on this Project or the Architect's authorized representative.

1.1.4 **As-Built Drawings:** Unless otherwise defined in the special conditions, reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal.

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

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

1.1.7 **Construction Manager:** The Director of Construction or its authorized representative, named as such by the District.

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

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

- 1.1.9.1 Site Lease
- 1.1.9.2 Facilities Lease
- 1.1.9.3 Non-collusion Affidavit
- 1.1.9.4 Performance Bond
- 1.1.9.5 Payment Bond (Developer's Labor & Material Bond)
- 1.1.9.6 These Construction Provisions

- 1.1.9.7 Labor Compliance Program Information and Forms (if applicable)
- 1.1.9.8 Hazardous Materials Procedures and Requirements
- 1.1.9.9 Workers' Compensation Certification
- 1.1.9.10 Prevailing Wage Certification
- 1.1.9.11 Disabled Veterans Business Enterprise Participation Certification
- 1.1.9.12 Drug-Free Workplace Certification
- 1.1.9.13 Criminal Background Investigation/Fingerprinting Certification
- 1.1.9.14 Hazardous Materials Certification
- 1.1.9.15 Lead-Based Paint Certification
- 1.1.9.16 Imported Materials Certification
- 1.1.9.17 Tobacco-Free Environment Certification
- 1.1.9.18 Roofing Project Certification (if applicable)
- 1.1.9.19 All Plans, Technical Specifications, and Drawings
- 1.1.9.20 Any and all addenda to any of the above documents
- 1.1.9.21 Any and all change orders or written modifications to the above documents if approved in writing by the District

1.1.10 **Contract Time:** The time period stated in the Facilities Lease for the completion of the Work.

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

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

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

1.1.14 **Dispute:** A separate demand by Developer for a time extension; payment of money or damages arising from Work done by or on behalf of the Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or Developer is not otherwise entitled to; or an amount of payment disputed by the District.

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

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

1.1.15.2 Direct the Construction Manager or the Architect to communicate with or direct the Developer on matters for which the

Contract Documents indicate the District will communicate with or direct the Developer.

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

1.1.17 **DSA:** Division of the State Architect.

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

1.1.19 **Labor Compliance Program:** (or "LCP") If this Project is funded at least in part with State bond funds for which a labor compliance program is required, and the District manages its own State-approved labor compliance program, then the LCP is the program and related documents and practices necessary for the program by which the District and/or its designee will ensure that the Developer and all Subcontractors pay prevailing wages to all workers on the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.33 **Specifications:** That portion of the Contract Documents, Division 1 through Division 17, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.

1.1.34 **State:** The State of California.

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

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

1.1.37 **Submittal Schedule:** The schedule of submittals as provided by Developer and reviewed by District.

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

1.1.39 **Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred

from, the Contract Documents, that are necessary for the construction and completion of the Project.

1.2 Laws Concerning the Contract Documents

The Contract Documents are subject to all provisions of the Constitution and laws of California governing, controlling, or affecting District, or the property, funds, operations, or powers of District, and such provisions are by this reference made a part hereof. Any provision required by law to be included in the Contract Documents shall be deemed to be inserted.

1.3 No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract Documents, shall affect or modify any of the terms or obligations contained in any of the Contract Documents.

1.4 No Assignment

Except as specifically permitted in the Facilities Lease, Developer shall not assign the Contract Documents or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of the District. Assignment without District's prior written consent shall be null and void. Any assignment of money due or to be come due under the Contract Documents shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with the Contract Documents. Developer shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

1.5 Notice and Service Thereof

1.5.1 Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

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

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

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

1.5.1.4 If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

1.6 No Waiver

The failure of District in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract Documents, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

1.7 Substitutions For Specified Items

Developer shall not substitute any items identified in the Contract Documents without prior written approval of the District.

1.8 Materials and Work

1.8.1 Except as otherwise specifically stated in the Contract Documents, Developer shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Contract Documents within the Contract Time.

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

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

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

1.8.5 Developer shall, after award of the Project by District and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays

to the Work. Developer shall, upon demand from District, present documentary evidence showing that orders have been placed.

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

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

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

1.8.9 Title to new materials and/or equipment for the Work of the Contract Documents and attendant liability for its protection and safety shall remain with Developer until incorporated in the Work of the Contract Documents and accepted by District. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of the Contract Documents. Developer shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to District or its authorized representative and shall, at the District's request, forward it to the District.

2. **ARCHITECT**

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

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

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

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

3. **CONSTRUCTION MANAGER**

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

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

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

3.4 It is agreed that the Construction Manager shall have final say where there is a difference in opinion between the Architect, Construction Manager and Project Inspector and the Developer may rely on any final decision made by the Construction Manager.

4. **INSPECTOR, INSPECTIONS, AND TESTS**

4.1 **Project Inspector**

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

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

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

4.2 **Tests and Inspections**

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

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

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

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

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

4.3 **Costs for After Hours and/or Off Site Inspections**

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

5. **DEVELOPER**

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

5.1 **Status of Developer**

5.1.1 Developer is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Developer or any of Developer's Subcontractors, agents or employees. Developer assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Developer, its Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Developer's activities to determine compliance with the terms of the Contract Documents.

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

5.2 **Developer's Supervision**

5.2.1 During progress of the Work, Developer shall keep on the Premises, and at all other locations where any Work related to the Contract Documents is being performed, a competent project manager and

construction superintendent who are employees of the Developer, to whom the District does not object and at least one of whom shall be fluent in English, written and verbal.

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

5.2.3 Before commencing the Work herein, Developer shall give written notice to District of the name of its project manager and construction superintendent. Neither the Developer's project manager nor construction superintendent shall be changed except with prior written notice to District, unless the Developer's project manager and/or construction superintendent proves to be unsatisfactory to Developer, District, any of the District's employees, agents, the Construction Manager, or the Architect, in which case, Developer shall notify District in writing. The Developer's project manager and construction superintendent shall each represent Developer, and all directions given to Developer's project manager and/or construction superintendent shall be as binding as if given to Developer.

5.2.4 Developer shall give efficient supervision to Work, using its best skill and attention. Developer shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to District, Construction Manager, and Architect any error, inconsistency, or omission that Developer or its employees and Subcontractors may discover, in writing, with a copy to District's Project Inspector(s). This obligation is for the purpose of facilitating the construction of the Project and it is recognized that Developer's review is made in the Developer's capacity as a general contractor and not as a licensed design professional.

5.3 **Duty to Provide Fit Workers**

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

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

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

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

5.4 **Purchase of Materials and Equipment**

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

5.5 **Documents On Work**

5.5.1 Developer shall at all times keep on the Work Site, or at another location as the District may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents shall be kept in good order and available to District, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all authorities having jurisdiction. Developer shall be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Developer, title 24, part 1, California Code of Regulations, section 4-343.) Developer shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Developer shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

5.5.2 **Daily Job Reports.**

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

- 5.5.2.1.1 A brief description of all Work performed on that day.
- 5.5.2.1.2 A summary of all other pertinent events and/or occurrences on that day.
- 5.5.2.1.3 The weather conditions on that day.
- 5.5.2.1.4 A list of all Subcontractor(s) working on that day,
- 5.5.2.1.5 A list of each Developer employee working on that day and the total hours worked for each employee.
- 5.5.2.1.6 A complete list of all equipment on Site that day, whether in use or not.
- 5.5.2.1.7 A complete list of all materials, supplies, and equipment delivered on that day.
- 5.5.2.1.8 A complete list of all inspections and tests performed on that day.

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

5.6 **Preservation of Records**

The District shall have the right to examine and audit all "Daily Job Reports" or other Project records of Developer's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; and as it pertains to change orders, all books, estimates, records, contracts, documents, cost data, subcontract job cost reports, and other data of the Developer, any Subcontractor, and/or supplier, including computations and projections related to estimating, negotiating, pricing, or performing the Work or modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the District. These documents may be duplicative and/or be in addition to any documents held in escrow by the District. The Developer shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under the Contract Documents. Notwithstanding the provisions above, Developer shall provide any records requested by any governmental agency, if available, after the time set forth above. District agrees that it will not furnish any of the records defined hereunder to any third party other than as required by law.

5.7 **Integration of Work**

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

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

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

5.8 **Obtaining of Permits and Licenses**

Developer shall secure and pay for any permits, licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the permits, licenses, and certificates are legally required to continue the Work without interruption. The Developer shall obtain and pay, only when legally required, for all licenses, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract Documents. All final permits, licenses, and certificates shall be delivered to District before demand is made for final payment. The costs associated with said permits, licenses and certificates shall be direct reimbursement items and are not subject to any markup.

5.9 **Work to Comply With Applicable Laws and Regulations**

5.9.1 Developer shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If Developer observes that Drawings and Specifications are at variance therewith, or should Developer become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Developer shall promptly notify District in writing and any changes deemed necessary by District shall be made as provided in the Contract Documents for changes in Work.

- 5.9.1.1 National Electrical Safety Code, U. S. Department of Commerce
- 5.9.1.2 National Board of Fire Underwriters' Regulations
- 5.9.1.3 Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including the California Green Building Standards Code, effective 01/01/2011, and other amendments
- 5.9.1.4 Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 5.9.1.5 Industrial Accident Commission's Safety Orders, State of California
- 5.9.1.6 Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 5.9.1.7 Americans with Disabilities Act
- 5.9.1.8 Education Code of the State of California
- 5.9.1.9 Government Code of the State of California
- 5.9.1.10 Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 5.9.1.11 Public Contract Code of the State of California
- 5.9.1.12 California Art Preservation Act
- 5.9.1.13 U. S. Copyright Act
- 5.9.1.14 U. S. Visual Artists Rights Act

5.9.2 Developer shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.). The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 et seq. ("CEQA")) in connection with the Project, and no further environmental review of the Project is necessary pursuant to CEQA before the construction of the Project may commence.

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

5.9.4 Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall,

or other body or agency, Developer shall use its best efforts to satisfy the requirements of such bodies or agencies.

5.10 Safety/Protection of Persons and Property

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

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

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

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

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

5.10.6 Developer shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of the Contract Documents and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by District. All Work shall be solely at Developer's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

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

5.10.8 Hazards Control – Developer shall store volatile wastes in approved containers and remove them from the Site as necessary by law.

5.10.9 Developer shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of

workers. Name and position of person so designated shall be reported to District by Developer.

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

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

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

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

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

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

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

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

5.10.18 Developer shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or

unreasonably encumber Premises or overload any structure with materials. Developer shall enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.

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

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

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

5.11 **General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("General Permit")**

5.11.1 Developer acknowledges that all California school districts are now or will soon be obligated to develop and implement the following storm water requirements, without limitation:

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

5.11.1.2 A Storm Water Pollution Prevention Plan (SWPPP) that contains specific best management practices (BMPs) and establishes numeric effluent limitations at:

5.11.1.2.1 Sites where the District engages in maintenance (e.g., fueling, cleaning, repairing) of transportation activities.

5.11.1.2.2 Construction sites where:

5.11.1.2.2.1 One (1) or more acres of soil will be disturbed, or

5.11.1.2.2.1.1 The Project is part of a larger common plan of development that disturbs more than one (1) acre of soil.

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

5.12 Working Evenings and Weekends

Developer may be required to work evenings and/or weekends at no additional cost to the District. Developer shall give the District notice prior to performing any evening and/or weekend work. Developer shall perform all evening and/or weekend work in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. Developer shall reimburse the District for any Inspector charges necessitated by the Developer's evening and/or weekend work.

5.13 Cleaning Up

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

5.13.2 Developer at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Developer shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If Developer fails to clean up, District may do so and the cost thereof shall be charged to Developer. If the Contract Documents call for Work on an existing facility, Developer shall also perform specific clean-up on or about the Premises upon request by the District as it deems necessary for the continuing education process. Developer shall comply with all related provisions of the Specifications.

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

5.13.4 Should the Developer fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the District, the District will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be

deducted from the Guaranteed Maximum Price, or District may withhold those amounts from payment(s) to Developer.

6. **SUBCONTRACTORS**

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

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

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

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

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

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

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

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

7. **OTHER CONTRACTS/CONTRACTORS**

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

7.2 Developer shall take reasonable steps to protect against damage to the work of any other contractor that Developer encounters while working on the Project.

7.3 If any part of Developer's Work depends for proper execution or results upon work of District or any other contractor, the Developer shall visually inspect, and with reasonable effort, physically inspect all accessible portions of District's or any other contractors work and promptly report to the District in writing before proceeding with its Work any defects in District's or any other contractor's work that render Developer's Work unsuitable for proper execution and results. Developer shall be held accountable for damages to District for District's or any other contractor's work that Developer failed to inspect or should have inspected. Developer's failure to inspect and report shall constitute Developer's acceptance of all District's or any other contractor's work as fit and proper for reception of Developer's Work, except as to defects that may develop in District's or any other contractor's work after execution of Developer's Work.

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

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

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

8. **DRAWINGS AND SPECIFICATIONS**

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

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

8.3 **Trade Name or Trade Term.**

It is not the intention of the Contract Documents to go into detailed descriptions of any materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of "trade name" or "trade term" shall be considered a sufficient notice to Developer that it will be required to complete the

work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

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

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

8.6 Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

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

8.8 **Ownership of Drawings**

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

9. **DEVELOPER'S SUBMITTALS AND SCHEDULES**

9.1 **Construction Schedule**

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

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

9.1.3 The District will review the schedules submitted and the Developer shall consider changes and corrections in the schedules as requested by the District.

9.2 **Schedule of Values**

The Developer shall provide a schedule of values for all of the Work, which includes quantities and prices of items aggregating the Guaranteed Maximum Price and subdivided into component parts as per specifications. The Schedule of Values shall not be modified or amended by the Developer without the prior consent and approval of the District, which may be granted or withheld in the sole discretion of the District. The District shall have the right at any time to revise the schedule of values if, in the District's sole opinion, the schedule of values does not accurately reflect the value of the Work performed.

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

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

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

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

9.4 **Complete Subcontractor List.** The name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

9.5 **Monthly Progress Schedule(s)**

9.5.1 Upon request by the District, Developer shall provide Monthly Progress Schedule(s) to the District. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be sent within the timeframe requested by the District and shall be in a format acceptable to the District and contain a

written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for District approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

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

9.6 **Material Safety Data Sheets (MSDS)**

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

10. **SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

10.1 **Site Investigation**

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

10.2 **Soils Investigation Report**

10.2.1 When a soils investigation report obtained from test holes at Site is available, that report shall be made available to the Developer.

10.3 **Layout and Field Engineering**

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

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

10.4 **Regional Notification Center**

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

10.5 **Existing Utility Lines**

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

10.5.2 Locations of existing utilities provided by District shall not be considered exact, but approximate within reasonable margin and shall not relieve Developer of responsibilities to exercise reasonable care nor costs of repair due to Developer's failure to do so. District shall compensate Developer for the costs of locating, repairing damage not due to the failure of Developer to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

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

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

10.6 **Notification**

Developer understands, acknowledges and agrees that the purpose for prompt notification to the District pursuant to these provisions is to allow the District to investigate the condition(s) so that the District shall have the opportunity to decide how the District desires to proceed as a result of the condition(s). Accordingly, failure of Developer to promptly notify the District in writing, pursuant to these provisions, shall constitute Developer's waiver of any claim for damages or delay incurred as a result of the condition(s).

10.7 **Hazardous Materials**

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

10.8 **No Signs**

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

11. **TRENCHES**

11.1 **Trenches Greater Than Five Feet**

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

11.2 **Excavation Safety**

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

11.3 **No Tort Liability of District**

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

11.4 **No Excavation Without Permits**

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

11.5 **Discovery of Hazardous Waste and/or Unusual Conditions**

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

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

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

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

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

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

12. **INSURANCE AND BONDS**

12.1 **Insurance**. All insurance shall be provided pursuant to the Owner Controlled Insurance Program ("OCIP") that has been established by the Alliance of Schools for Cooperative Insurance Programs ("ASCIP") as identified in Article 15 of the Facilities Lease and as further detailed in Attachment 1 to this Exhibit D, attached hereto and incorporated herein by reference.

12.2 **Contract Security - Bonds**

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

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

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

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

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

13. **WARRANTY/GUARANTEE/INDEMNITY**

13.1 **Warranty/Guarantee**

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

In addition to guarantees required elsewhere, Developer shall, and hereby does guarantee and warrant all Work furnished on the job against all defects for a period of **ONE (1)** year after the date of completion as defined in Public Contract Code section 7107, subdivision (c). If any work is not in compliance with the Drawings and Specifications, Developer shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of completion as defined above without expense whatsoever to District. In the event of failure of Developer and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, Developer and Surety hereby acknowledge and agree that District is authorized to proceed to have defects repaired and made good at expense of Developer and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

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

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

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

13.2 **Indemnity** Developer shall indemnify the District as indicated in the Facilities Lease.

14. **TIME**

14.1 **Computation of Time / Adverse Weather**

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

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

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

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

14.1.1.4 The number of days of delay for the month exceed the following parameters:

January	[6]	July	[0]
February	[5]	August	[0]
March	[5]	September	[1]
April	[4]	October	[1]
May	[1]	November	[3]
June	[0]	December	[5]

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

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

14.2 **Hours of Work**

14.2.1 Sufficient Forces

Developer and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

14.2.2 Performance During Working Hours

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

14.3 **Progress and Completion**

14.3.1 Time of the Essence

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

14.3.2 No Commencement Without Insurance

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

14.4 **Schedule**

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

14.5 **Expeditious Completion**

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

15. **EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

15.1 **Liquidated Damages**

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

15.2 **Excusable Delay**

15.2.1 Developer shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Developer or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Developer shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Developer has timely submitted the Construction Schedule as required herein.

15.2.2 Developer shall notify the District pursuant to the claims provisions in these Construction Provisions of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

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

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

15.2.3.2 Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

15.2.3.3 A recovery schedule must be submitted.

15.3 No Additional Compensation for Delays Within Developer's Control

15.3.1 Developer is aware that governmental agencies, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Developer-prepared drawings or approve a proposed alternate installation. Accordingly, Developer has included in the Guaranteed Maximum Price, time for possible review of its drawings and for reasonable delays and damages that may be caused by such

agencies. Thus, Developer is not entitled to make a claim for damages for delays arising from the review of Developer's drawings.

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

15.3.2.1 The District is responsible for the delay;

15.3.2.2 The delay is unreasonable under the circumstances involved;

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

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

15.4 **Float or Slack in the Schedule**

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Developer.

16. **CHANGES IN THE WORK**

16.1 **No Changes Without Authorization**

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

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

16.1.3 Should any Change Order result in an increase in the Guaranteed Maximum Price, the cost of that Change Order shall be agreed to, in writing, in advance by Developer and District and be subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that Developer proceeds with any change in Work without a Change Order

executed by the District, Developer waives any claim of additional compensation or time for that additional work.

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

16.2 **Architect Authority**

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

16.3 **Change Orders**

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

16.3.1.1 A description of a change in the Work;

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

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

16.3.2 Changes in Guaranteed Maximum Price

A Change Order Request ("COR") shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Maximum Price.

16.3.3 Unknown and/or Unforeseen Conditions

If Developer submits a COR requesting an increase in Guaranteed Maximum Price and/or Contract Time that is based at least partially on Developer's assertion that Developer has encountered unknown and/or unforeseen condition(s) on the Project, then Developer shall base the COR on provable information that, and to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, the District shall deny the COR and the Developer shall complete the Project without any increase in Guaranteed Maximum Price and/or Contract Time based on that COR..

16.4 **Format for Change Order Request**

The following format shall be used as applicable by the District and the Developer to communicate proposed additions and deductions to the Contract Documents, supported by attached documentation.

	<u>SUBCONTRACTOR PERFORMED WORK</u>	DD	EDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	Subtotal		
(e)	Add Subcontractor's overhead and profit , not to exceed ten percent (10%) of item (d)		
(f)	Subtotal		
(g)	Add Developer's overhead and profit , not to exceed _____ percent (10.35%) ¹ of Item (f)		
(h)	Subtotal		
(i)	Add Bond and Insurance , at Developer's Cost		
(j)	TOTAL		
(k)	Time		_____ Days

	<u>DEVELOPER PERFORMED WORK</u>	DD	EDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered)		
(c)	Add Equipment (attach suppliers' invoice)		
(d)	Subtotal		
(e)	Add Developer's overhead and profit , not to exceed fourteen and one-half percent (14.5%) of item (d) .		
(f)	Subtotal		
(g)	Add Bond and Insurance , at Developer's Cost		
(h)	TOTAL		
(i)	Time		_____ Days

16.5 **Change Order Certification**

¹ In accordance with RFP submitted by Developer to District.

16.5.1 All Change Orders and CORs must include the following certification by the Developer:

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

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

16.6 Determination of Change Order Cost

16.6.1 The amount of the increase or decrease in the Guaranteed Maximum Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

16.6.1.1 District acceptance of a COR;

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

16.6.1.3 By agreement between District and Developer.

16.7 Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein.

16.8 Discounts, Rebates, and Refunds

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

16.9 Construction Change Directives

16.9.1 A Construction Change Directive is a written order prepared and

issued by the District, the Construction Manager, and/or the Architect and signed by the District and the Architect, directing a change in the Work. The District may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

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

16.10 **Force Account Directives**

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

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

16.10.3 All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

16.10.4 The Developer shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Developer to administer Force Account Directive.

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

16.10.6 The Developer shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force

account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the Developer for their records. The District will not sign, nor will the Developer receive compensation for work the District cannot verify. The Developer will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work

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

16.11 **Accounting Records**

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

16.12 **Notice Required**

If the Developer desires to make a claim for an increase in the Guaranteed Maximum Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with this subparagraph. Developer shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Maximum Price or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

16.13 **Applicability to Subcontractors**

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

16.14 **Alteration to Change Order Language**

Developer shall not alter Change Orders or reserve time in Change Orders. In the event the Contractor is entitled to a time extension, time shall be granted in the appropriate Change Order. Developer shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

16.15 **Failure of Developer to Execute Change Order**

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

17. **REQUESTS FOR INFORMATION**

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

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

18. **PAYMENTS**

18.1 **Guaranteed Maximum Price**

As compensation for Developer's construction of the Project, the District shall pay Developer pursuant to the terms of **Exhibit "C"** to the Facilities Lease.

18.2 **Applications for Tenant Improvement Payments**

18.2.1 Procedure for Applications for Tenant Improvement Payments

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

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

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

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

18.2.1.1.4 A certification that the As-Built Drawings and annotated Specifications are current;

18.2.1.1.5 Itemized breakdown of work done for the purpose of requesting partial payment;

18.2.1.1.6 An updated and acceptable construction schedule in conformance with the provisions herein;

18.2.1.1.7 The additions to and subtractions from the Guaranteed Maximum Price and Contract Time;

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

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

18.2.1.1.10 Schedule of Values updated from the preceding Application for Payment;

18.2.1.1.11 A duly completed and executed conditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

18.2.1.1.12 A duly completed and executed unconditional waiver and release upon Tenant Improvement Payment compliant with Civil Code section 3262 from the Developer and each subcontractor of any tier and supplier that was paid from the previous Tenant Improvement Payment; and

18.2.1.1.13 A certification by the Developer of the following:

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

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

18.2.1.1.14.1 Developer and/or its Subcontractor(s) provide CPRs acceptable to the District for all weeks any journeyman, apprentice, worker or other employee was employed in connection with the Work directly to the Labor Commissioner monthly or to the District if the Project is not subject to State

labor compliance, and within ten (10) days of any request by the District or the Labor Commissioner in accordance with section 16461 of Title 8 of the California Code of Regulations, and

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

18.2.2 Prerequisites for Tenant Improvement Payments

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

18.2.2.1.1 Installation of field office;

18.2.2.1.2 Installation of temporary facilities and fencing;

18.2.2.1.3 Schedule of unit prices, if applicable;

18.2.2.1.4 Initial progress report.

18.2.2.1.5 List of Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;

18.2.2.1.6 All bonds and insurance endorsements; and

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

18.2.3 **No Waiver of Criteria.** Any payments made to Developer where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Developer may pay its Subcontractors and suppliers. Developer agrees that failure to submit such items may constitute a breach of contract by Developer and may subject Developer to termination.

18.3 **District's Approval of Application for Payment**

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

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

18.3.3 Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the Developer as soon as practicable, but not later than seven (7) days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

18.3.4 An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment as further detailed in the abatement provisions of the Facilities Lease, and payment is not delayed due to an audit inquiry by the financial officer of the District.

18.3.5 The District's review of the Developer's Application for Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

18.3.6 Observation of the Work for general conformance with the Contract Documents,

18.3.7 Results of subsequent tests and inspections,

18.3.8 Minor deviations from the Contract Documents correctable prior to completion, and

18.3.9 Specific qualifications expressed by the Architect.

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

18.3.11 **Payments to Developer**

18.3.11.1 Within thirty (30) days after approval of the Application for Payment, Developer shall be paid a sum equal to ninety percent (90%) of the value of the Work performed (as verified by Architect and Inspector and certified by Developer) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be Developer's best estimate. No inaccuracy or error in said estimate shall operate to release the Developer, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of the Contract Documents, and the District shall have the right subsequently to correct any error made in any estimate for payment.

18.3.11.2 The Developer may not be entitled to have payment requests processed, or may be entitled to have only partial payment made for Work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

18.3.11.3 If the District fails to make any Tenant Improvement Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment from the Developer, the District shall pay interest to the Developer equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

18.3.12 No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of the Contract Documents. The District may correct or require correction of any error subsequent to any payment

18.3.13 Warranty of Title

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

18.3.13.2 If the Developer fails to furnish to the District within ten (10) calendar days after demand by the District satisfactory evidence that a lien or a claim based on a stop notice has been released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expenses incurred or suffered by District from any sum payable to Developer under the Contract.

18.4 Decisions to Withhold Payment

18.4.1 Reasons to Withhold Payment

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

18.4.1.1 Failure to commence and diligently pursue remediation of Defective Work within **SEVENTY- TWO (72)** hours of written notice to Developer;

18.4.1.2 Stop Notices or other liens served upon the District as a result of the Contract Documents;

18.4.1.3 Liquidated damages assessed against the Developer;

18.4.1.4 The cost of completion of the Contract Documents if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Maximum Price or by the Contract Time;

18.4.1.5 Damage to the District or other contractor(s);

18.4.1.6 Unsatisfactory prosecution of the Work by the Developer;

18.4.1.7 Failure to store and properly secure materials;

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

18.4.1.9 Failure of the Developer to maintain As-Built Drawings;

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

18.4.1.11 Unauthorized deviations from the Contract Documents;

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

18.4.1.13 If the District has an LCP in force on this Project, the failure to provide certified payroll records as required by the LCP, by State labor compliance, by these Contract Documents or by written request for each journeyman, apprentice, worker, or other employee employed by the Developer and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate;

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

18.4.1.15 Failure to comply with any applicable federal requirements regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements;

18.4.1.16 Failure to properly maintain or clean up the Site;

18.4.1.17 Payments due to the District or a third party to indemnify, defend, or hold harmless the District;

18.4.1.18 Failure to perform any implementation and/or monitoring required by the General Permit, including without limitation any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Contractor

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

18.4.1.20 Failure to pay any royalty, license or similar fees;

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

18.4.1.22 Developer is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

18.4.2 Reallocation of Withheld Amounts

18.4.2.1 District may, in its discretion, and after first giving Developer written notice and the opportunity to respond, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Developer. If any payment is so made by District, then that amount shall be considered a payment made under the Contract Documents by District to Developer and District shall not be liable to Developer for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. District will render Developer an accounting of funds disbursed on behalf of Developer.

18.4.2.2 If Developer defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **SEVENTY-TWO (72)** hours written notice to the Developer and opportunity to commence and pursue cure of default, to the Developer and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Maximum Price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with the provisions of the Contract Documents, an equitable reduction in the Guaranteed Maximum Price (of at least one

hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

18.4.2.3 Payment After Cure

When Developer removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Developer to perform in accordance with the terms and conditions of the Contract Documents.

18.5 Subcontractor Payments

18.5.1 Payments to Subcontractors

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

18.5.2 No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

18.5.3 Joint Checks

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Developer and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

19. COMPLETION OF THE WORK

19.1 Completion

19.1.1 District will accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District.

19.1.2 The Work may only be accepted as complete by action of the governing board of the District.

19.1.3 District, at its sole option, may accept completion of Project and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of District, except for minor corrective items, as

distinguished from incomplete items. If Developer fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of completion, District shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

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

19.2 **Close-Out Procedures**

19.2.1 Punch List

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

19.2.2 Close-Out Requirements

19.2.3 Utility Connections

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

19.2.4 As-Built Drawings

19.2.4.1 Developer shall provide exact "as-built" of the Work upon completion of the Project as indicated in the Lease Documents ("As-Built Drawings").

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

19.2.4.3 Upon completion of the Work and as a condition precedent to approval of final payment, Developer shall obtain the Inspector's approval of the corrected prints.

19.2.5 Maintenance Manuals: Developer shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

19.3 **Final Inspection**

19.3.1 Developer shall comply with Punch List procedures as provided herein, and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to

ensure proper and timely completion of the Punch List. Under no circumstances shall Developer demobilize its forces prior to completion of the Punch List. Upon receipt of Developer's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Developer and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Lease Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

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

19.3.3 Final Inspection Requirements

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

19.3.3.1.1 The Work has been completed.

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

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

19.3.3.1.4 Electrical circuits scheduled in panels and disconnect switches labeled.

19.3.3.1.5 Painting and special finishes complete.

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

19.3.3.1.7 Tops and bottoms of doors sealed.

19.3.3.1.8 Floors waxed and polished as specified.

19.3.3.1.9 Broken glass replaced and glass cleaned.

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

19.3.3.1.11 Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

19.3.3.1.12 Finished and decorative work shall have marks, dirt, and superfluous labels removed.

19.3.3.1.13 Final cleanup, as provided herein.

19.4 **Costs of Multiple Inspections**

Any unreasonable requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Developer and if funds are available, withheld from remaining payments.

19.5 **Partial Occupancy or Use Prior to Completion**

19.5.1 District's Rights to Occupancy

The District may occupy or use any completed or partially completed portion of the Work upon District's acceptance of that completed or partially completed portion of the Work. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Developer or the Developer's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Developer shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the District shall have the right to occupy or use any portion of the Work that it needs or desires to use.

19.5.2 Inspection Prior to Occupancy or Use

Immediately prior to partial occupancy or use, the District, the Developer, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

19.5.3 No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

20. **FINAL PAYMENT**

20.1 **Final Payment**

Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment. The District shall thereupon jointly inspect

the Work and either accept the Work as complete or notify the Architect and the Developer in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Developer as fully complete (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Developer shall, upon receipt of final payment from the District, pay the amount due Subcontractors.

20.2 **Prerequisites for Final Payment** The following conditions must be fulfilled prior to Final Payment:

20.2.1 With respect to all Stop Notices served upon District by subcontractors and suppliers for which Developer is responsible, a full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Developer, including a notarized release of Stop Notice, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights or a Stop Notice Release Bond.

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

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

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

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

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

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

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

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

- 20.2.10 After approval by the District of the Architect's Certificate of Payment,
- 20.2.11 After the satisfaction of the conditions set forth herein, and
- 20.2.12 After thirty-five (35) days after the recording of the Notice of Completion by District.
- 20.2.13 No interest shall be paid on any amounts withheld due to a failure of the Developer to perform, in accordance with the terms and conditions of the Contract Documents.

21. **UNCOVERING OF WORK**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Developer's expense without change in the Guaranteed Maximum Price or Contract Time.

22. **NONCONFORMING WORK AND CORRECTION OF WORK**

22.1 **Nonconforming Work**

22.1.1 Developer shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Developer shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

22.1.2 If Developer does not commence to remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed **SEVENTY-TWO (72)** hours after written notice and complete removal of work within a reasonable time, District may remove it and may store any material at Developer's expense. If Developer does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Developer.

22.2 **Correction of Work**

22.2.1 Correction of Rejected Work

Pursuant to the notice provisions herein, the Developer shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether

observed before or after Completion and whether or not fabricated, installed, or completed. The Developer shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

22.2.2 One-Year Warranty Corrections

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

22.3 **District's Right to Perform Work**

22.3.1 If the Developer should neglect to prosecute the Work properly or fail to perform any provisions of the Contract Documents, the District, after providing **SEVENTY-TWO (72)** hours written notice and an opportunity to cure the failure, to the Developer, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Developer.

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

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

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

22.3.2.3 That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Developer's nonconforming Work, in which case the District shall either issue a deductive Change Order or invoice the Developer for the cost of that work. Developer shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Developer.

23. **TERMINATION AND SUSPENSION**

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

23.1 **Emergency Termination of Public Contracts Act of 1949**

23.1.1 In addition to the Parties' right to termination under the Facilities Lease, the Contract Documents 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.

23.1.1.1 Section 4410 of the Government Code states:

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

23.1.1.2 Section 4411 of the Government Code states:

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

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

24. **CLAIMS AND DISPUTES**

24.1 **Performance During Dispute or Claim Process**

Developer shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

24.2 **Definition of Dispute**

The term "Dispute" means a separate demand by the Developer for:

24.2.1 A time extension;

24.2.2 Payment of money or damages arising from Work done by or on behalf of the Developer pursuant to the Contract and payment of which is not otherwise expressly provided for or Developer is not otherwise entitled to; or

24.2.3 An amount of payment disputed by the District.

24.3 **Dispute Presentation**

24.3.1 If Developer intends to apply for an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Developer shall, within ten (10) days after the event giving rise to the Dispute, give notice of the Dispute in writing and submit to the District a written statement of the damage sustained or time requested. On or before twenty (20) days after Developer's written Notice of Dispute, Developer shall file with the District an itemized statement of the details and amounts of its Dispute for any increase in the Contract Price or Contract Time. Otherwise, Developer shall have waived and relinquished its dispute against the District and Developer's claims for compensation or an extension of time shall be forfeited and invalidated. Developer shall not be entitled to consideration for payment or time on account.

24.3.2 The Notice of Dispute shall identify:

24.3.2.1 The issues, events, conditions, circumstances and/or causes giving rise to the dispute;

24.3.2.2 The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments; and

24.3.2.3 The line-item costs for labor, material, and/or equipment, if applicable.

24.3.3 The Notice of Dispute shall include the following certification by the Developer:

24.3.3.1 The undersigned Developer certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the dispute on behalf of the Developer.

24.3.3.2 Furthermore, Developer understands that the value of the attached dispute expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

24.3.4 If a Dispute, or any portion thereof, remains unresolved upon satisfaction of all applicable Dispute Resolution requirements, the Developer shall comply with all claim resolution requirements as provided in Public Contract Code 20104.

24.3.5 Developer shall bind its Subcontractors to the provisions of this section and will hold the District harmless against disputes by Subcontractors.

24.4 **Dispute Resolution**

24.4.1 Developer shall file with the District the Notice of Dispute, including the documents necessary to substantiate it, on or before the day of submitting the application for final payment.

24.4.2 District shall respond in writing within forty-five (45) days of receipt of the Dispute or may request in writing within thirty (30) days of receipt of the Dispute any additional documentation supporting the Dispute or relating to defenses or claims District may have against the Developer.

24.4.2.1 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

24.4.2.2 District's written response to the documented Dispute shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Developer to produce the additional information, whichever is greater.

24.4.3 If Developer disputes the District's written response, Developer may file a claim pursuant to the Claim Resolution requirements provided herein.

24.5 **Definition of Claim**

24.5.1 The term "Claim" means a dispute that remains unresolved at the conclusion of the Dispute Resolution requirements as provided herein.

24.6 **Claim Presentations**

24.6.1 Developer must timely submit the Notice of Claim and all documents necessary to substantiate any Claim. Otherwise, Developer shall have waived and relinquished its Claim against the District and Developer's Claims for compensation or an extension of time shall be forfeited and invalidated, and Contractor shall not be entitled to consideration for payment or time on account of the instant matter. No Claim shall be presented prior to completion of a particular Project phase. Any statute that might otherwise govern the presentation of an unresolved Dispute, including but not limited to Government Code section 900 i. and Public Contract Code section 20104 et seq. shall be tolled for all purposes during the course of construction on the Project.

24.6.1.1 All Claims shall include the following certification by the Developer:

24.6.1.1.1 The undersigned Developer certifies under penalty of perjury that the attached claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Developer believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Developer.

24.6.1.1.2 Furthermore, Developer understands that the value of the attached claim expressly includes any and all of the Developer's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

24.6.2 The attention of the Developer is drawn to Government Code section 12650, et seq. regarding penalties for false claims.

24.6.3 If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Dispute and Claim Resolution requirements, the Developer shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Developer's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a Dispute or Claim must be presented to the District shall be tolled from the time the Developer submits its written Dispute or Claim until the time the Dispute or Claim is denied, including any time utilized by any applicable meet and confer process.

24.6.4 The Developer shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against claims by Subcontractors.

24.7 **Claim Resolution**

24.7.1 In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall, after the conclusion of the Dispute Resolution requirements, attempt to resolve the Claim by those procedures set forth herein.

24.7.2 Claims of \$375,000 or Less

24.7.2.1 For all Claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between Contractor and District, the procedure set forth in Public Contract Code section 20104 et seq. shall apply:

24.7.2.1.1 Developer shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

24.7.2.1.2 For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the claim or relating to defenses or claims the District may have against the Developer.

24.7.2.1.3 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

24.7.2.1.4 District's written response to the documented Claim shall be submitted to the Developer within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Developer to produce the additional information, whichever is greater.

24.7.2.2 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Developer.

24.7.2.2.1 If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Developer.

24.7.2.2.2 The District's written response to the claim, as further documented, shall be submitted to the Developer within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Developer to produce the additional information or requested documentation, whichever is greater.

24.7.2.3 If Developer disputes the District's written response, or the District fails to respond within the time prescribed, Developer may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

24.7.2.4 Following the meet and confer conference, if the claim or any portion of it remains in dispute, the Developer may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

24.7.2.5 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

24.7.2.6 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

24.7.2.7 The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

24.7.3 Claims Over \$375,000

24.7.3.1 For all Claims of over three hundred seventy-five thousand dollars (\$375,000) which arise between a Developer and the District, the following procedure shall apply:

24.7.3.1.1 The parties agree to first endeavor to settle the dispute in an amicable manner by mediation before having recourse to a judicial forum. The Claim shall be identified in writing to the District within thirty (30) days from the date of Developer's application for final payment of all Contract balances not in dispute and shall be mediated within one hundred and twenty (120) days from the submission of the Claim to the District. For purposes of filing a Claim to mediation, the running of the time within which mediation must be filed shall be tolled from the time the Developer submits its written Claim until the time the Claim is denied. Mediator fees and administrative costs of the mediation shall be shared equally by the parties.

24.7.3.1.2 District may assert any counter-claims it has for damages against Developer, including, but not limited to, defective Work, delay damages, and liquidated damages.

24.7.4 Developer shall bind its Subcontractors to the provisions of this section and will hold the District harmless against disputes by Subcontractors.

24.8 **Dispute and Claim Resolution Non-Applicability**

24.8.1 The procedures for dispute and claim resolutions set forth in Article 24 shall not apply to the following:

24.8.1.1 Personal injury, wrongful death or property damage claims;

24.8.1.2 Latent defect or breach of warranty or guarantee to repair;

24.8.1.3 Stop notices;

24.8.1.4 District's rights set forth in the Article on Suspension and Termination;

24.8.1.5 Disputes arising out of the LCP or State labor compliance, if applicable; or

24.8.1.6 District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Dispute and Claim Resolution requirements provided in this Article.

24.8.1.7 Developer's costs incurred in seeking relief under this Article are not recoverable from the District.

25. **STATE LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS**

25.1 **Wage Rates, Travel, and Subsistence**

25.1.1 Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. Developer shall obtain and post a copy of these wage rates at the job site.

25.1.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

25.1.3 Developer shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Developer or any Subcontractor and such workers.

25.1.4 If prior to execution of the Facilities Lease, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

25.1.5 Pursuant to Labor Code section 1775, Developer shall, as a penalty to District, forfeit the statutory amount (believed by the District to be currently fifty dollars (\$50)) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract Documents by Developer or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Developer.

25.1.6 Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage

rate shall be retroactive to time of initial employment of such person in such classification.

25.1.7 Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

25.1.8 Developer shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Developer shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

25.2 Hours of Work

25.2.1 As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Developer or by any Subcontractor on any subcontract under the Contract Documents upon the Work or upon any part of the Work contemplated by the Contract Documents shall be limited and restricted by Developer to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Developer in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

25.2.2 Developer shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Developer in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

25.2.3 Pursuant to Labor Code section 1813, Developer shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) for each worker employed in the execution of the Contract Documents by Developer or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

25.2.4 Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

25.3 Payroll Records

25.3.1 Developer shall prepare and provide to the District, and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the District, an accurate and complete certified payroll record ("CPR"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Developer and/or each Subcontractor in connection with the Work.

25.3.2 The CPRs enumerated hereunder shall be certified and shall be provided to the District on a monthly basis. The CPRs from the Developer and each Subcontractor for each month shall be provided on or before Wednesday of the week following the month covered by the CPRs. District shall not make any payment to Developer until:

25.3.2.1 The Developer and/or its Subcontractor(s) provide CPRs acceptable to the District; and

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

25.3.3 All CPRs shall be available for inspection at all reasonable hours at the principal office of Developer on the following basis:

25.3.3.1 A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

25.3.3.2 CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

25.3.3.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Developer, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Developer.

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

I, _____ (Name-Print), the undersigned, am the _____
(Position in business) with the authority to act for and on behalf of ____

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

Date: _____ Signature: _____
(Section 16401 of the California Code of Regulations)

25.3.5 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Developer awarded the Project under the Contract Documents or performing under the Contract Documents shall not be marked or obliterated.

25.3.6 Developer shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

25.3.7 In the event of noncompliance with the requirements of this section, Developer shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Developer must comply with this section. Should noncompliance still be evident after the ten (10) day period, Developer shall, as a penalty to District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each , until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payments then due.

25.4 **Apprentices**

25.4.1 Developer acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then the Contract Documents are governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Developer to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

25.4.2 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

25.4.3 Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is

employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

25.4.4 Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

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

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

25.4.7 If Developer or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

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

25.4.7.2 Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

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

25.4.7.4 Developer shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

25.5 **Non-Discrimination**

25.5.1 Developer herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, sexual orientation, age, or

physical handicap in the performance under the Contract Documents and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Developer and Subcontractor.

25.5.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Developer agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

25.6 **Labor First Aid**

Developer shall maintain emergency first aid treatment for Developer's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq.).

26. **MISCELLANEOUS**

26.1 **Assignment of Antitrust Actions**

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

26.1.1 Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Developer or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Developer, without further acknowledgment by the parties.

26.1.2 Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

26.1.3 Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

26.1.4 Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

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

26.2 **Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Maximum Price.

26.3 **Taxes**

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

26.4 **Shipments**

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

END OF DOCUMENT

Attachment 1 to Exhibit D – Insurance Requirements

1. Overview. California Education Code §17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease. In conjunction with the approval of this Construction Services Agreement, (the "**District**") will enter into a site lease with Contractor, under which it will lease to the Contractor a portion of the District School site, and improvements thereon, in order for Contractor to construct improvements to this existing school site.

The District is a participant in an Owner Controlled Insurance Program (the "**OCIP**") that has been established by the Alliance of Schools for Cooperative Insurance Programs ("**ASCIP**"). In accordance with the provisions of Government Code §4420.5, Labor Code §§6300, et seq. and Title 8 of the California Code of Regulations, the District has elected to include the Project in the OCIP. This means that the District will provide some of the insurance policies that would normally be provided by the Contractor and its Subcontractors and Sub-Subcontractors for construction of the Project. In accordance with the District's OCIP, the District shall purchase, provide and maintain for the benefit of the Contractor, its Subcontractors and Sub-Subcontractors certain insurance as more particularly set forth in this Exhibit, and subject to the terms and conditions of this Exhibit, the Contract Documents and any addenda to the Contract Documents, for claims which arise out of the Insured Work performed by the Contractor, its Subcontractors and Sub-Subcontractors for which the Contractor, its Subcontractors and Sub-Subcontractors may be legally liable. Because the District will provide certain insurance coverage through an OCIP, the Contractor's Guaranteed Maximum Price ("GMP"), and its Subcontractors' base bids must be calculated to exclude all insurance costs for coverage provided by the OCIP, as described in Section 4.1 and summarized in Section 4.2 herein. Additionally, the Contractor and its Subcontractors' must meet certain insurance-related qualification criteria in order to qualify for coverage under the OCIP. The Contractor and its Subcontractors and Sub-Subcontractors must comply with all safety programs established and/or adopted by the District in connection with the OCIP must and comply with all other requirements related to the OCIP.

The OCIP is more fully described in the "Insurance Manual", and the policies and endorsements ("OCIP Coverages"). The OCIP Coverages have precedence and supersede any conflicting provisions contained in the Contract Documents or in the Insurance Manual. In addition, District has arranged for Builder's Risk insurance. By submitting its GMP, the Contractor is deemed to have agreed and acknowledged that it has reviewed the Insurance Manual, the OCIP Coverages, and the Builder's Risk insurance. The OCIP will provide to the Enrolled Contractors/Subcontractors, as defined below, in connection with performance of the Insured Work, the OCIP Coverages. Enrolled Contractors/Subcontractors are responsible for maintaining the insurance coverage described in Section 4.3 below and in the Insurance Manual. The OCIP does not cover Excluded Parties, defined below. Excluded Parties and parties no longer covered by the OCIP shall maintain, and shall require each of their Subcontractors and Sub-Subcontractors to obtain and maintain, the insurance coverage described in Section 4.4 below and in the Insurance Manual.

2. Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract Documents.

2.1 Excluded Work. The term "Excluded Work" as used herein means Project-related work that is not conducted at the Project Site, which work is hereby excluded from coverage under the OCIP and the OCIP insurance. The District is not providing general liability or workers compensation insurance for Project-related, off-Site operations and the District is not providing automobile insurance of any kind. Enrolled Contractors/Subcontractors must purchase this insurance and must provide the District with an ACORD 25-S Certificate of Insurance indicating satisfactory evidence of (a) primary automobile insurance coverage, and (b) proof of general liability and workers compensation insurance for off-Site operations. Refer to Sections **16.12** through **16.17** below.

2.2 Excluded Parties. The term "Excluded Parties" as used herein means (1) vendors; (2) suppliers; (3) contract haulers; (4) equipment owners/operators; (5) those performing surveying services; (6) those performing soil testing; and (7) those solely loading, transporting or unloading materials, personnel, parts or equipment or any other items to, from or within the Site.

2.3 Enrolled Contractors/Subcontractors: The term "Enrolled Contractors/Subcontractors" as used herein means those Contractors, Subcontractors and Sub-Subcontractors who have submitted enrollment forms and have been accepted into the District's OCIP as evidenced by a Certificate of Insurance for OCIP policies.

2.4 Insured Parties: The term "Insured Parties" as used herein means the District and Enrolled Contractors/Subcontractors named in one or more of the District's OCIP policies or named in one or more Certificate of Insurance signed by a duly authorized representative of an OCIP insurer.

2.5 Insured Work: The term "Insured Work" as used herein means Work performed on the Site. Any type or description, surveying, soil testing, and solely loading, transporting or unloading of materials, personnel, parts or equipment or any other items to, from or within the Site is excluded.

2.6 OCIP Administrator: The term "OCIP Administrator" means Arthur J. Gallagher & Co. or such other company or entity as may be designated by the District. The OCIP Administrator is an independent contractor retained by the joint powers authority, ASCIP, of which the District is a Member, to administer the District's OCIP. The OCIP Administrator is authorized and empowered to act on behalf of the District to the extent set forth herein and in the Contract Documents. The removal or replacement of the designated OCIP Administrator shall not result in adjustment of the Guaranteed Maximum Price or contract time or otherwise affect, limit or restrict Contractor's obligations under the Contract Documents.

3. Guaranteed Maximum Price, Base Bid Insurance Costs:

3.1 Contractor and Subcontractors Must Exclude Certain Insurance Costs. The Contractor's GMP, and all Subcontractors' base bids, must exclude all insurance costs for Workers' Compensation, Employers Liability, General Liability, and Excess Liability OCIP Coverages and Builder's Risk insurance for operations conducted on-Site for all eligible Contractors, Subcontractors and Sub-Subcontractors who will perform Insured Work on the Project Site as summarized in Section **4.2** below and more fully described in the OCIP Coverages. No Subcontractor will be permitted to change the pricing included in its base bid.

4. Insurance:

4.1 OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions from coverage are summarized in this Exhibit, in the Insurance Manual, and other Contract Documents, and are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Coverages in this **Exhibit I** and in the Insurance Manual are not intended to be complete or alter or amend any provision of the actual OCIP insurance policies. Enrolled Contractors/Subcontractors must review the OCIP insurance policies for actual terms and conditions. In the event any provision of this Exhibit, the Insurance Manual, or the Contract Documents, conflicts with the any of the OCIP insurance policies, the OCIP insurance policies shall govern. Enrolled Contractors/Subcontractors shall be deemed to have reviewed, understood and agreed to all terms and conditions of the OCIP insurance policies, including exclusions from coverage. The OCIP insurance policies are available for inspection upon request.

4.2 Summary of OCIP Coverages Provided by District The following summary of OCIP Coverages will be provided only to eligible and Enrolled Contractors/Subcontractors during the term of initial construction:

4.2.1	Workers Compensation Insurance	
	In accordance with limits established by law.	Statutory Limits
4.2.2	Employers Liability Insurance:	\$1,000,000
4.2.3	Commercial General Liability Insurance (excluding Automobile Liability)	
	Per Occurrence	\$2,000,000
	Aggregate	\$4,000,000
	Products/Completed Operations Aggregate*	\$4,000,000
	* 10 years Extended Products/Completed Operations Coverage commences upon completion of the Project.	
4.2.4	Excess Liability Insurance	
	Per Occurrence	\$25,000,000
	Aggregate	\$25,000,000
4.2.5	Builders Risk Insurance	Project Limits

4.3 Insurance Provided by Contractors/Subcontractors: The Contractor, all Subcontractors and Sub-Subcontractors (except Excluded Parties covered under Section **16.17**) shall provide and maintain the following insurance coverages for off-Site operations, with minimum coverage amounts as set forth below:

4.3.1	Workers Compensation Insurance	
	In accordance with limits established by law.	Statutory Limits
4.3.2	Employers Liability Insurance	\$1,000,000
4.3.3	Commercial General Liability Insurance	
	Per Occurrence	\$2,000,000

	Aggregate	\$4,000,000
4.3.4	Automobile Liability Insurance	
	Bodily Injury/Property Damage per Occurrence	\$1,000,000
4.3.5	Aircraft Liability Insurance (if applicable)	
	Per Occurrence	\$5,000,000
	Aggregate	\$5,000,000

4.4 Insurance Provided by Excluded Parties.

Pursuant to Section **16.17** the Excluded Parties shall provide and maintain the following insurance coverages, with minimum coverage amounts as set forth below:

4.4.1	Workers Compensation Insurance	
	In accordance with limits established by law.	Statutory Limits
4.4.2	Employers Liability Insurance	\$1,000,000
4.4.3	Commercial General Liability Insurance	
	Per Occurrence	\$1,000,000
	Aggregate	\$2,000,000
4.4.4	Automobile Liability Insurance	
	Bodily Injury/Property Damage per Occurrence	\$1,000,000
4.4.5	Aircraft Liability Insurance (if applicable)	
	Per Occurrence	\$5,000,000
	Aggregate	\$5,000,000

4.5 Pollution Legal Liability Insurance.

Pursuant to Section **16.20**, the Excluded Parties shall provide and maintain minimum coverage amounts as set forth below:

	Per Occurrence	\$5,000,000
	Aggregate	\$5,000,000

4.6 Duration and Extent of Insurance Coverage Provided by OCIP.

4.6.1 Term and Extent of Coverage for Contractor. Upon the District's acceptance of completion of the Project and of the work required of the Contractor under the Contract Documents, all coverage afforded to the Contractor under the OCIP will be automatically terminated without further notice or action, with the exception of a ten (10) year extension of coverage for Products and Completed Operations which commences upon completion of the Project. Evidence of Contractor's Non-OCIP insurance, as described in Section **16.12** must be in place before Contractor commences corrective work during the warranty period.

4.6.2 Term and Extent of Coverage for Subcontractors. When a Subcontractor or Sub-Subcontractor completes its punch list work, submits Form 6 as described in the Insurance Manual and the District accepts as

complete the performance of the Subcontractor or Sub-subcontractor on the Project, all coverage afforded to that Subcontractor or Sub-Subcontractor under the OCIP will be terminated without further notice or action, with the exception of a ten (10) year extension of coverage for Products and Completed Operations which commences upon completion of the Project. Evidence of Subcontractors and Sub-Subcontractors Non-OCIP insurance, as described in Section **16.13** must be in place before Subcontractors and Sub-Subcontractors commence corrective work during the warranty period.

5. Minimum Safety Requirements

5.1 Minimum Qualifications for Contractor/Subcontractor OCIP Enrollment - THESE SAFETY REQUIREMENTS CANNOT BE MODIFIED.

- Drug Program – Pre Assignment
- 6' Fall Protection, harnesses and lanyards required if other protective means are not used.
- OSHA "Serious" Violations - No more than 5 serious violations within 5 years, with no more than 2 serious repeats in 5 years
- OSHA "Willful" Violations – NONE
- Hardhats & Safety Glasses are required at all times & other Personal Protective Equipment (PPE) required by work being conducted

5.2 Contractor's and Subcontractors' Minimum Safety Requirements.

The Contractor must meet the Minimum Safety Requirements. In addition, the Contractor must establish that Subcontractors, who, in the aggregate, will perform at least sixty-five percent (65%) of the work of the total GMP, inclusive of all additive alternates, but exclusive of hazardous materials abatement costs, meet or exceed the Minimum Safety Requirements.

6. Safety Program and Industrial Safety Record Requirements. Contractor and all Subcontractors and Sub-Subcontractors must submit all of the following information to the District within 48 hours after the District's request. The District reserves the right to reject a Subcontractor or Sub-Subcontractor bid if any of that information discloses that such bidder is not eligible for OCIP insurance pursuant to criteria established by the District, the OCIP Administrator, ASCIP or the OCIP's underwriter, Liberty Mutual Insurance Company ("**Insurance Carrier**").

6.1 A copy of a written Injury and Illness Prevention Program ("**IIPP**"), or, if Contractor, a Subcontractor or Sub-Subcontractor does not have a written IIPP, a detailed narrative statement of the IIPP that the Contractor, Subcontractor or Sub-Subcontractor intends to use in connection with the work on the Project Site. The District requires that the Contractor modify its IIPP as necessary to establish the following warnings and fines for observed safety violations:

First instance of specific infraction: verbal and written warning;

Second infraction of same type: \$100 fine;

Third infraction of same type: \$1,000 fine;

Fourth infraction of same type: One day's suspension from project at minimum;

Gross safety violation:

Expulsion from job Site.

6.2 A written statement identifying any and all instances during the last five (5) years in which the Contractor, or its Subcontractors or Sub-Subcontractors were convicted in a state or federal court or administrative action of a "serious violation" and/or "willful violation" of health and safety statutes, regulations, ordinances, orders or other laws. As to each such conviction, the Contractor, Subcontractor or Sub-Subcontractor, respectively, must include a detailed description of the facts upon which such conviction was based. The Contractor, a Subcontractor or Sub-Subcontractor will be ineligible to receive OCIP insurance (and will therefore be ineligible to be awarded a contract for the Project) if, within the last five (5) years, it had (a) more than five (5) "serious" violations, (b) more than two occurrences of the same type of "serious" violation (*i.e.* more than two "serious repeat" violations) or (c) any "willful" violation.

6.3 Contractor's Worker's Compensation "Experience Modification Factor" or "Experience Modification Rate" as defined by the State of California Workers' Compensation Insurance Rating Bureau (WCIRB). Contractor will be ineligible to receive OCIP insurance (and will therefore be ineligible to be awarded a contract for the Project) if its Experience Modification Factor or Experience Modification Rate, including the rates of listed Subcontractors and Sub-Subcontractors exceeds 1.25 for a five-year mean average.

7. Additional Information. The District may request additional information from Contractor or any Subcontractor or Sub-Subcontractor to the extent such information is reasonably necessary to allow the District to determine whether Contractor, Subcontractor or Sub-Subcontractor qualifies to receive OCIP insurance under the OCIP. If any Subcontractor or Sub-Subcontractor cannot or will not provide such information within the time requested by the District, the District may reject that bid as non-responsive.

8. District's Election to Substitute, Modify or Discontinue OCIP Coverages. District reserves the right, at its option and without obligation to do so, to modify the OCIP Coverages, (however ASCIP and Arthur J. Gallagher must be notified prior to any changes), or any portion thereof, to procure alternative coverages (provided such coverage is not less than that specified in the Contract Documents), or to request Contractor or any of its Subcontractors or Sub-Subcontractors withdraw from the OCIP. Upon District's thirty (30) day prior written notice, Contractor, Subcontractors and Sub-Subcontractors, as specified by District in such notice, shall obtain and thereafter maintain during the performance of the work, Workers Compensation, Employer's Liability and General Liability OCIP Coverages and Builder's Risk insurance with limits as summarized in Subsections **4.2.1, 4.2.2, 4.2.3** and **4.2.5**, and with the scope summarized in Subsection **16.11** below (except that such insurance shall cover both on-Site and off-Site work) all as more fully described in the OCIP Coverages. In such event, District shall require the coverage for the price stated in the Contractor's GMP, or in the case of a Subcontractor or Sub-contractor, subcontractor their actual, verifiable insurance cost at the time of award. This cost must be substantiated by Contractor, Subcontractor or Sub-Subcontractor by submission of their insurance declaration page(s), man hour reports for the project, and any other information required by the District. If the District makes this election after award, the District shall increase the Guaranteed Maximum Price by change order by the pro rata amount of the substantiated premium price through evidence satisfactory to the District attributable to the remaining work to be performed by Contractor and any designated Subcontractors and Sub-Subcontractors. All insurance secured by the Contractor, Subcontractors or Sub-Subcontractors pursuant to this Article shall be in policies subject to the prior written approval of the District as to form, content, limits of liability, cost and issuing company.

9. Additional Information to be Provided by the Contractor

9.1 Provide copies of this Insurance Requirements **Exhibit I** and attachments to all Subcontractors and Sub-Subcontractors who will perform the work of the Project.

9.2 Complete and deliver to the District an insurance application in the form of "Form 2 – Insurance Application", which will be provided upon or prior to execution of the Construction Services Agreement, providing information pertaining to Contractor. Such information includes, without limitation, the Contractor's industry classification code(s) for work on the Project Site, the Contractor's projected payroll for the Project, and the Contractor's experience modification factor.

9.3 Cause each of the Subcontractors and Sub-Subcontractors who will perform work or provide materials or services to Contractor in connection with the Project to complete an insurance application in that same form with respect to those Subcontractors.

9.4 Provide a certificate (or certificates) of insurance evidencing that Contractor has obtained the insurance required for Enrolled Contractors/Subcontractors.

9.5 Provide a certificate (or certificates) of insurance evidencing that Contractor has the current ability to obtain insurance required for Excluded Parties.

9.6 Deliver all of the completed insurance application forms to the District.

10. Audit of Contractor's Project Payroll. The OCIP Administrator or the Insurance Carrier will conduct an audit of Contractor's Project payroll and that of its Subcontractors of every tier. This service will be provided as part of the OCIP as a means in which to segregate the portion of payroll attributable to the Project and covered by the OCIP insurance ("**OCIP Payroll**") from that of other operations not covered by the OCIP. There are two reasons for this audit. First, the Insurance Carrier is required to report this information to the Workers' Compensation Insurance Rating Bureau (WCIRB) for calculation of the "Experience Modifier" of Contractor and Subcontractors. Second, and more importantly, it provides Contractor with the necessary documentation to ensure that it will not be charged by its regular Workers' Compensation carrier for payroll generated under the OCIP.

11. Do Not Report OCIP Payroll to Regular Carriers. If you are enrolled in the OCIP, you should not report your OCIP Payroll to your regular Workers' Compensation and General Liability insurance carriers. You do not have to (and should not) report this, because the Project Site insurance premiums, relative to the OCIP insurance will be paid for by the District under the OCIP. You should not be charged premiums for the Project by your insurance carrier(s). Thus, insurance is a breakeven line item for you on this Project.

12. Monthly Payroll Report Forms. The Contractor all Subcontractors of every tier must, on a monthly basis not later than the tenth (10th) calendar day of each month, complete and deliver to the District and OCIP Administrator a Monthly Payroll Report Form for the preceding calendar month to be provided by the OCIP Administrator upon Contractor enrollment in the OCIP.

13. Notice of Work Completion. Not later than ten (10) calendar days after the Contractor's completion of its work (as defined in the Contract Documents) on the Project, the Contractor shall prepare and deliver to the District and OCIP Administrator a "Form 4 – Notice of Work Completion" to be provided by OCIP Administrator upon Contractor enrollment in the OCIP. The Contractor shall cause each of its Subcontractors on the Project to prepare

and deliver that form to the District and OCIP Administrator within ten (10) calendar days following the completion of the Subcontractor's work on the Project.

14. Drug Testing Program. The Contractor shall submit to any drug-testing and/or drug-free workplace program instituted by the District and/or OCIP Administrator in connection with the OCIP relative to the Project. A copy of the District's current form of drug-testing/drug-free workplace program (which is subject to change without notice at the District's discretion) is included in the Contract Documents and incorporated herein by this reference. (See Attached Drug-Testing Program)

15. Professional Safety Consultant/Compliance with Safety Requirements. The OCIP Administrator will provide a professional safety consultant to oversee safety procedures on the Project. The Contractor must comply, and must cause its Subcontractors and Sub-Subcontractors to comply, with the recommendations of that safety consultant as they pertain to ASCIP's safety program and any state or federal OSHA requirements.

16. Insurance

16.1 Evidence of OCIP Coverage.

16.1.1 **Evidence of Contractor's OCIP Insurance:** Provided that the Contractor has supplied to the District its completed OCIP Enrollment Form within 5-days of the execution of the Contract Documents, the District shall deliver to the Contractor Certificates of Insurance evidencing the insurance coverages provided under Section 4.2 for only the Contractor prior to issuance of the Contractor's Notice to Proceed. Failure or refusal of the Contractor to timely and properly deliver its OCIP Enrollment Form may be deemed by the District to be a default of a material obligation of the Contractor, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law.

16.1.2 **Evidence of Subcontractors' OCIP Insurance:** At least five (5) working days prior to any Subcontractor's or Sub-Subcontractor's commencing work on the Site, the Contractor shall provide the District with an OCIP Enrollment Form completed and executed by such Subcontractor or Sub-Subcontractor. Provided that the Contractor has timely provided such OCIP Enrollment Form, the District shall deliver to the Contractor a Certificate of Insurance evidencing the insurance coverages provided under Section 4.2 for such Subcontractor or Sub-Subcontractor prior to commencement of such Subcontractor's or Sub-Subcontractor's work at the Site.

16.1.3 **No Work at the Site without OCIP Insurance:** Under no circumstances shall any Contractor, Subcontractor or Sub-Subcontractor eligible for coverage under the District's OCIP commence work at the Site without having submitted to the District a completed and executed OCIP Enrollment Form and without having received an OCIP Certificate of Insurance issued in the name of such Contractor, Subcontractor or Sub-Subcontractor. It is the sole responsibility of the Contractor to ensure that all Insured Contractors/Subcontractors performing Insured Work of the Project are properly and timely enrolled in the District's OCIP program. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation. Under no circumstances shall Contractor's failure or refusal to ensure that all Insured Contractors/Subcontractors are properly and timely enrolled in the District's

OCIP result in any adjustment of the Guaranteed Maximum Price or contract time.

16.2 Maintenance of Insurance: the District shall maintain insurance as set forth in Subsections **4.2.1** through **4.2.5**, inclusive, without interruption from the date of commencement of the work until the time set forth in Subsections **4.6.1** and **4.6.2**. The District shall maintain Completed Operations coverage for a period of ten (10) years after completion.

16.3 Substitute Insurance: In the event the District is unable to furnish, or after commencement of the Work elects not to furnish or to continue to furnish the insurance coverage described in Section **4.2**, or any portion thereof, and upon thirty (30) days' written notice from the District to the Insured Contractors / Subcontractors, the District may, in its sole discretion (a) procure and provide to Insured Contractors/Subcontractors at the District's expense substantially similar insurance reasonably available at such time; or (b) require the Contractor to secure and maintain all or as much of the insurance herein described as the District designates at the District's cost as provided in Section **8** above. All insurance secured by the Contractor, Subcontractors or Sub-Subcontractors pursuant to this Section shall be in policies subject to the prior written approval of the District as to form, content, limits of liability, cost and issuing company.

16.4 No Waiver of Contract Obligations: Nothing contained in this Exhibit shall be construed to relieve or limit the Contractor, Subcontractors, Sub-Subcontractors or Excluded Parties of responsibility or obligations imposed by the Contract Documents or in equity or at law, including but not limited to the extent to which the Contractor may be held legally liable for damages to persons or property. Nothing contained in this Exhibit shall be construed as the District's assumption of any responsibility for construction means, methods, techniques, sequences, procedures, safety precautions or programs for the Project, all of which remain the sole responsibility of Contractor, or for acts or omissions of the Contractor, Subcontractors, Sub-Subcontractors, Excluded Parties, or their respective agents or employees, or of any other persons performing portions of the Work.

16.5 Waivers of Subrogation: Contractor hereby waives, and shall require all Subcontractors and Sub-Subcontractors to waive, all rights against the District, its officers, agents, employees, representatives and consultants, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective agents, officers, employees and representatives, for recovery of damages to the extent those damages are covered by policies of insurance obtained pursuant to Section **4.2**.

16.6 District's Right to Audit: The Contractor warrants to the District the accuracy of the information provided in connection with its participation in the District's OCIP and agrees that the District, its officers, agents, representatives, insurance carriers and OCIP Administrator may audit the records, including but not limited to payroll records and insurance records of the Contractor, Subcontractors and Sub-Subcontractors to confirm the accuracy of information provided and to evaluate the effect, if any, on insurance resulting from changes in the work. Any such audits will be conducted during the Contractor's normal business hours at the office of the Contractor or at another mutually agreeable location. The Contractor shall maintain or cause to be maintained sufficient records as may be necessary to audit its compliance and that of Subcontractors and Sub-Subcontractors with the requirements of the OCIP.

16.7 Assignment of OCIP Refunds and Dividends: Contractor, its Subcontractors and Sub-Subcontractors, in consideration of the agreement of District to arrange insurance and pay premiums as provided by Section 4.2 for the Contractor, Subcontractors and Sub-Subcontractors, and for other good and valuable consideration, assigns to District all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP policies. Contractor shall require all Subcontractors and Sub-Subcontractors to assign to District all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP policies.

16.8 Deductible for Builder's Risk Insurance: Contractor shall be responsible for the first **Five Thousand Dollars (\$5,000)** of each loss or damage covered by the Builder's Risk Insurance provided by the District which is caused by the Contractor or any Subcontractor or Sub-Subcontractor or for which the Contractor, Subcontractor or Sub-Subcontractor is liable, and for all uninsured losses. No loss or damage, if any, incurred hereunder shall excuse Contractor's complete and satisfactory performance of the provisions of the Contract Documents.

16.9 Contractor Responsibility to Repair Damaged Work: Notwithstanding the provisions of this Exhibit, and until the work is completed and accepted by the District, the Contractor shall have full and complete charge and care of and shall bear all risk of loss of, and injury or damage to, the work or any portion thereof (including District furnished supplies, material, equipment or other items to be utilized with or incorporated in the work) to the fullest extent of the law. The Contractor shall rebuild, repair, restore and make good losses of, and injuries or damages to, the work or any portion thereof (including District furnished supplies, material, equipment or other items to be utilized with or incorporated in the work) before the work is completed and accepted. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense; provided, however, that District will make available applicable proceeds from the Builder's Risk insurance provided under the District's OCIP.

16.10 Adjustment of OCIP Claims: The Contractor, Subcontractors, Sub-Subcontractors and Excluded Parties shall assist the District, its agents and the OCIP Administrator and provide the utmost cooperation in the adjustment of claims arising out of the operations conducted under, or in connection with, the Project and shall cooperate with the District's Insurers in claims and demands that arise out of the work and that the Insurers are called upon to adjust or resist.

16.11 OCIP Coverages; No District Warranty: The District does not warrant or represent that the OCIP coverages constitute an insurance portfolio that adequately addresses the risks of the Contractor, Subcontractors or Sub-Subcontractors. The Contractor, Subcontractors and Sub-Subcontractors shall satisfy themselves as to the existence, extent and adequacy of the OCIP coverages prior to the commencement of work under the Contract Documents.

16.12 Insurance Provided by Contractor / Subcontractors: The Contractor shall, until the work is completed and accepted, provide and maintain insurance and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section 16.17) to provide and maintain insurance of the type and in the limits as set forth below and in Section 4.3. Except as otherwise provided by the Builder's Risk insurance, the Non-OCIP insurance is intended to cover employee injury, personal injury, bodily injury and property damage liability for work performed away from the Project Site and for work of the Project performed after completion, including but not limited to corrective work performed during the warranty period. Such

insurance may be provided in single policy or multiple policies (primary and excess), including an umbrella form and is subject to the following:

16.12.1 In the event one of the insureds incurs liability to any other of the Insureds, these policies shall provide protection for each insured against which claim is or may be made, including claims by other insureds in the same manner as if separate policies had been issued to each insured.

16.12.2 Notice of occurrences or claims under the policies shall be made to the District's Representative.

(a) Workers' Compensation/Employer's Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section **16.17**) to provide Workers' Compensation/Employer's Liability insurance in the statutory limits of the workers' compensation laws of the State of California, including Coverage B – Employers Liability, in an amount not less than that specified in Subsections **4.3.1** and **4.3.2**, respectively, for Project-related operations occurring away from the Project Site and for work of the Project after completion.

(b) Commercial General Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section **16.17**) to provide Commercial General Liability insurance in a form providing coverage not less than that of an ISO Commercial General Liability coverage form (occurrence form) 1998 edition or later for all operations of the party required to furnish same, including hazards of operations (including explosion, collapse and underground coverage), elevators, independent contractors, employees as additional insureds, completed operations, with contractual liability coverage (for contracts related to the work), personal injury liability and excess Employer's Liability, for personal injury, bodily injury and property damage arising out of the work, for operations away from the Project Site and after completion in policies of insurance with limits in an amount not less than that specified in Subsection **4.3.3**.

(c) Automobile Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section **16.17**) to provide Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks, and trailers of the Contractor, Subcontractors and Sub-Subcontractors. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy with limits not less than that specified in Subsection **4.3.4** for occurrences both at and away from the Project Site.

(d) Aircraft Liability Insurance: If aircraft are used by the Contractor, Subcontractors, Sub-Subcontractors or anyone else on their behalf, such Contractor, Subcontractor, Sub-Subcontractor or other entity shall maintain or cause the operator of the aircraft to maintain aircraft public liability insurance insuring passengers and the general public against personal injury, bodily injury or property damage arising from aircraft owned, used, operated or hired in connection with the

work of the Contractor, Subcontractor, Sub-Subcontractor or anyone else, with limits in an amount not less than that specified in Subsection **4.3.5**.

16.13 Evidence of Contractor's Non-OCIP Insurance: Concurrently with delivery of the executed Contract Documents, Contractor shall deliver to the District Certificates of Insurance evidencing the Contractor's Non-OCIP insurance coverage required by Sections **4.3** and **16.11**. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. Under no circumstances shall Contractor commence work at the Site without having submitted to the District Certificates of Insurance for all Non-OCIP insurance to be provided by the Contractor. Contractor's failure to timely provide the District with all Non-OCIP Certificates of Insurance shall not result in any adjustment of the Guaranteed Maximum Price or Contract Time. The Certificates of Insurance and the insurance policies required by Sections **4.3** and **16.11** shall contain a provision that coverage afforded under such policies will not be canceled or allowed to expire without at least thirty (30) days' prior written notice to: District, District Service Center, attn: Contracts Administrator. Should any policy of insurance required under Section **4.3** be canceled and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. Upon District's request, the Contractor shall furnish satisfactory proof of coverage of each type of Non-OCIP insurance required by the Contract Documents, including copies of the insurance policies or renewals or replacements in form and content acceptable to the District; failure of the Contractor to comply with the District's request may be deemed to be a default of a material obligation of the Contractor under the Contract Documents.

16.14 Evidence of Subcontractors' Non-OCIP Insurance: Contractor shall require that every Subcontractor or Sub-Subcontractor (except Excluded Parties covered under Section **16.17**) obtain and maintain the policies of insurance set forth in Section **4.3** herein. The limits of liability of such policies shall be as set forth in Section **4.3**. Each of the policies of insurance obtained and maintained by a Subcontractor or Sub-Subcontractor hereunder shall conform to the requirements of Section **16.11**. Upon request of the District, Contractor shall promptly deliver Certificates of Insurance evidencing that the Subcontractors and Sub-Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of Sections **4.3** and **16.11**. Failure or refusal of the Contractor to provide the District with such Certificates of Insurance may be deemed to be a material default of Contractor under the Contract Documents.

16.15 No Work at the Site without Non-OCIP Insurance: Under no circumstances shall any Contractor, Subcontractor or Sub-Subcontractor (except Excluded Parties) commence Work at the Site without having all Non-OCIP insurance issued and in effect in accordance with the provisions of Sections **4.3** and **16.11**. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation under the Contract Documents. Under no circumstances shall Contractor's failure or refusal in this regard result in any adjustment of the Guaranteed Maximum Price or contract time.

16.16 Additional Insurance: Pursuant to the provisions of Government Code §4420(b) (5), nothing contained in the Contract Documents or otherwise shall prohibit the Contractor, its Subcontractors, any Sub-Subcontractor or any other entity providing or performing work of the Project from purchasing any additional insurance or coverage which he, she or it believes is necessary to protect such person or entity from any liability arising under the Contract Documents, the Project or the work. Any such additional insurance procured by such person or entity shall be at the procuring party's sole expense.

16.17 Waivers of Subrogation: Contractor hereby waives, and shall require all Subcontractors and Sub-Subcontractors to waive, all rights against the District, its officers, agents, employees, representatives and consultants, Project Manager, Architect, IOR and OCIP Administrator, and their respective agents, officers, employees and representatives, for recovery of damages to the extent those damages are covered by policies of insurance obtained pursuant to Sections **4.3** and **4.4**.

16.18 Insurance Provided by Excluded Parties: The Contractor shall require all Excluded Parties to provide and maintain insurance of the type and limits set forth below and in the Section **4.4**. Such insurance shall name the parties required to secure same as insureds and shall be in a form and through issuing companies acceptable to the District. Such insurance may be provided in single policy or multiple policies (primary and excess), including an umbrella form. Such insurance shall contain a defense of suits provision and shall provide the coverages set forth in Section **4.4** under the following conditions:

(a) Notwithstanding any inconsistent statement in the policies obtained by Contractor and/or Excluded Parties, or any endorsement or certificate attached thereto, it is agreed that the District, its officers, agents, employees and representatives, Project Manager, Architect, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives, are additional insureds (for all coverages except Workers' Compensation/Employer's Liability), and that coverage is provided for all operations, uses, occupation, acts and activities of such insureds under the Contract Documents, as may be amended or adjusted, regardless of whether liability is attributable to the insured or a combination of the insured and one or more additional insureds. The Contractor shall name, and shall require the Excluded Parties to name, the District, its officers, agents, employees and representatives, the Project Manager, Architect, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives, as additional insureds under the policies required pursuant to Section **4.4**. As to the insurance required by Section **16.17.2**, such additional insured status shall be provided and maintained using ISO additional insured endorsement CG 20 10 (11/85 edition), or a substitute providing equivalent coverage. The additional insured status required herein as to Section **16.17.2** shall be maintained on behalf of all specified parties for a period of ten (10) years after the work is completed and accepted. Upon the District's request, the Contractor and/or Excluded Party shall provide copies of all additional insured endorsements procured pursuant to this Section.

(b) The coverage provided by the policies obtained by Contractor and/or Excluded Parties is primary coverage and non-contributing with insurance, if any, carried by the District, its officers, agents, employees and representatives, the Project Manager, Architect, IOR or OCIP Administrator, and their respective

officers, agents, employees and representatives. All such additional insured endorsements issued thereon shall be so endorsed.

(c) In the event one of the insureds incurs liability to any other of the insureds, these policies shall provide protection for each insured against which claim is or may be made, including claims by other insureds in the same manner as if separate policies had been issued to each insured.

(d) Notice of occurrences or claims under the policies shall be made to the District's Representative.

16.18.1 Workers' Compensation/Employer's Liability Insurance: The Contractor shall require all Excluded Parties to provide Workers' Compensation/Employer's Liability insurance in the statutory limits of the workers' compensation laws of the State of California, including Coverage B – Employer's Liability, in an amount not less than that specified Subsections **4.4.1** and **4.4.2**, respectively, covering operations of the party in connection with the work both at and away from the Project Site.

16.18.2 Commercial General Liability Insurance: The Contractor shall require all Excluded Parties to provide Commercial General Liability Insurance in a form providing coverage not less than that of an ISO Commercial General Liability coverage form (occurrence form) 1998 edition or later for all operations of the party required to furnish same, including hazards of operations (including explosion, collapse and underground coverage), elevators, independent contractors, employees as additional insureds, products and completed operations (for ten (10) years after the work is completed and accepted), with contractual liability coverage (for contracts related to the work), personal injury liability and excess Employer's Liability, for personal injury, bodily injury and property damage arising out of the work in policies of insurance with limits in an amount not less than that specified in Subsection **4.4.3**.

16.18.3 Automobile Liability Insurance: The Contractor shall require all Excluded Parties to provide Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers of the Excluded Parties. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy with limits in an amount not less than that specified in Subsection **4.4.4** for occurrences both at and away from the Project Site.

16.18.4 Aircraft Liability Insurance: If aircraft are used by an Excluded Party or anyone else on their behalf, such Excluded Party or other entity shall maintain or cause the operator of the aircraft to maintain aircraft public liability insurance insuring passengers and the general public against personal injury, bodily injury or property damage arising from aircraft owned, used, operated or hired in connection with the work of the Excluded Party or anyone else, with limits in an amount not less than that specified in Subsection **4.4.5**.

16.19 Evidence of Excluded Parties' Insurance: Contractor shall require that every Excluded Party obtain and maintain the policies of insurance set forth in Sections **4.4** and **16.17.1** through **16.17.4** herein. The limits of liability of such policies shall be as set forth in Section **4.4**. Each of the policies of insurance obtained and maintained by an Excluded Party hereunder shall conform to the requirements of

Section **16.17**. Upon request of the District, Contractor shall promptly deliver Certificates of Insurance evidencing that the Excluded Parties have obtained and maintained policies of insurance in conformity with the requirements of Section **16.17**. Failure or refusal of the Contractor to provide the District with such Certificates of Insurance may be deemed to be a material default of Contractor under the Contract Documents.

16.20 No Work at the Site without Excluded Parties' Insurance: Under no circumstances shall any Excluded Party commence work at the Site without having all insurance issued and in effect in accordance with the provisions of Section **16.17**. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation. Under no circumstances shall Contractor's failure or refusal in this regard result in any adjustment of the Guaranteed Maximum Price or contract time.

16.21 Pollution Legal Liability Insurance: Contractor (if performing or providing any hazardous waste services, abatement or otherwise, of any type or description for the Project) shall provide and maintain, and shall require any other person or entity performing such services to provide and maintain (hereinafter collectively referred to as "Hazardous Waste Contractor"), insurance covering losses caused by pollution conditions that arise from the operations, including the completed operations, of such Hazardous Waste Contractor. Such insurance shall apply to bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. The policies of insurance affording these coverages shall be written with limits in an amount not less than that set forth in Section **4.5**. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. The policies of insurance issued hereunder shall be written by an insurer acceptable to the District and shall be endorsed to include as insureds the District, its officers, agents, employees and representatives, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives. If coverage is written on a claims-made basis, the Hazardous Waste Contractor shall warrant that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract and that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years after the work is completed and accepted. If coverage is written on an occurrence basis, the District, its officers, agents, employees and representatives, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives, shall be named as insureds on the Hazardous Waste Contractor's pollution legal liability policies for operations, including completed operations, relating to, or arising out of, work for the Project for a period of ten (10) years after the work is completed and accepted. At least five (5) working days' prior to any Hazardous Waste Contractor's commencing Work on the Site; Contractor shall provide the District with Certificates of Insurance evidencing the coverage required hereunder.

16.22 Contractor Obligations: Contractor agrees to comply with any and all terms and conditions of the policies of insurance provided by District and to comply with any and all claims handling procedures, loss prevention programs and other programs required by or related to the District's OCIP as set forth herein. Contractor shall require Subcontractors, Sub-Subcontractors and all others covered by the District's OCIP insurance policies to so comply. Contractor, its Subcontractors and Sub-

Subcontractors shall furnish to the District, its OCIP Administrator, its designee or the insurers under the OCIP policies all information and documentation that such entity may require from time to time in connection with the issuance of policies under The Contract Documents or the administration of the OCIP in such form and substance as such entity may prescribe and promptly comply with the recommendations of the OCIP insurers. Contractor shall not violate, or knowingly permit to be violated; any conditions of the policies of insurance provided by the District hereunder and shall at all times satisfy the requirements of the insurers issuing them. Contractor shall assure that all OCIP requirements imposed upon and to be performed by the Contractor shall likewise be imposed upon, assumed and performed by each Subcontractor and Sub-Subcontractor. If the Contractor, Subcontractors, Sub-Subcontractors or Excluded Parties should fail to comply with the requirements of this Section, the District may withhold payment due to the Contractor or suspend the work at the Contractor's sole expense and without adjustment of the Guaranteed Maximum Price or contract time until such time as the Contractor, its Subcontractors, Sub-Subcontractors and/or Excluded Parties have performed such obligations to the reasonable satisfaction of the District.

16.22 Minimum safety requirements cannot be changed by the District and or by the District representatives.

Disclaimer

It is recommended that these documents be reviewed by counsel before insertion into the Contract Documents. Any changes to these documents must be reviewed by our office before including in any Contract Document. No changes can be made to any of the safety requirements listed herein.

Please send a copy of your final Contract Document language regarding OCIP insurance provision to Arthur J. Gallagher & Co.

How do I remove the insurance cost relating to the OCIP from my Bid? You will need to determine what you will pay for insurance for this particular project if your regular insurance carrier(s) were to provide the coverage for your work.

PROJECTED WORKER'S COMPENSATION INSURANCE COST

STEPS 1 - Determine the on-Site payroll for the job by multiplying the total estimated job hours and the prevailing wage rate.

Labor Description	Worker's Comp Class Code	Total Estimated Job Hours	Multiply by Wage Rate	Total Estimated Payroll
Masonry > \$19 hr	5028	300	\$23.05	\$6,915

STEP 2 - Multiply the Estimated Payroll by your regular Workers' Compensation Rate and Divide by 100.

Worker's Comp Class Code	Total Estimated Payroll	Rate per \$100 payroll		WC Premium
5028	6,915	20.91	a)	1,445.92
<p>STEP 3 - If you have Employer Liability on regular Work Comp policy, multiply this amount by your EL Increased Limit rate (For this example use 3.30) and divide by 100.</p> <p>$\\$1,445.92 \times 3.30 = \\$4,771.53$ $\\$4,771.53 \div 100 = \\47.71</p>			b)	47.71
Article 6 SUBTOTAL				1,493.63
<p>STEP 4 - Take the Experience Modifier Rate shown on your Work Comp policy and multiply it by the subtotal above. (For this example use 1.25) $\\$1,493.63 \times 1.25 = \\$1,867.03$</p>			Modified Premium	1,867.03
<p>NOTE - In addition to the above basic calculation, your existing work comp carrier may apply various credits (which reduce your Modified Premium) or debits (which increase your Modified Premium). Please contact your agent or call the OCIP Administrator (949) 349-9859 if you require assistance.</p>				

BEFORE YOU BEGIN...
 If you do not already have a copy of your own Workers' Compensation & General Liability Policy, you should contact your Workers' Compensation and General Liability broker and obtain the rates and credits that apply on your existing policies.

PROJECTED GENERAL LIABILITY INSURANCE COST

STEP 5 – To determine the cost associated with General Liability coverage, you must know the rate and premium basis that your insurance carrier uses. General Liability premiums can be based on payroll, contract value, or receipts and the premium rates can be applied per 100 or per 1,000.

Class Code	Premium Basis	Rate per \$100 or per \$1000	GL Premium
97447	Estimated Payroll: \$6,915	2.98 Per 100	\$206.06
$6,915 \times 2.98 = \$20,606.70$ $\$20,606.70 \div 100 = \206.06			
NOTE – In addition to the above basic calculation, your existing General Liability carrier may apply various credits (which reduce your Modified Premium) or debits (which increase your Modified Premium). Please contact your agent or call the OCIP Administrator (949) 349-9859 if you require assistance.			

STEP 6 – Combine Project Workers’ Compensation Insurance Cost and General Liability Insurance Cost.

Workers’ Compensation Insurance Cost	1,867.03
General Liability Insurance Cost	206.06
TOTAL INSURANCE COST FOR OCIP PROJECT	2,073.09

STEP 7 – Estimate your costs for the job and subtract insurance cost for coverage provided by the OCIP.

Original Bid Amount	\$24,000.00
Projected Insurance Cost	-2,073.09
Adjusted Bid Amount **	\$21,926.91

If you have any question regarding the above calculations please determine the total work hours for this project and contact your insurance broker for assistance in determining your deductions. If you leave your insurance cost in the bid and your competitor removes it he/she should be the lower bidder with all factors being equal.



Insurance Cost Worksheet - FORM 1A

1. Contractor Information

Federal ID # _____

Company Name: _____
 Address: _____
 City, State, Zip: _____

2. Bid Information - see section 7 if you are subcontracting any work

Contract/Bid# _____ Scope of Work: _____
 If you are a subcontractor, who are you contracted with? _____

Contract Amt: _____ Contract awarded on (date): _____
 Self Performed: _____ This work expected to start (date): _____
 Subcontracted: _____

3. Your contact information Please indicate the person responsible for each item below:

Contact Type	Name	Telephone#	Fax #	Email
Payroll				
Insurance				

4. Workers Compensation Insurance Information

WC Class Code	Labor Description	Estimated Job Hours	Estimated Payroll	Rate per \$100 Payroll	WC Premium (Payroll/100 X Rate)
Total					

Sub-Total: _____
 Employer's Liability Increased Limits Factor: _____
 Limits Premium = (Sub-Total) X Increased Limits Factor: _____
 Experience Modifier: _____
 Modified Premium = (Limits Premium) X Experience Modifier: _____
 State Assessment Factor: _____
 Assessment Premium = Modified Premium X State Assessment Factor: _____
 Self Ins. Cost = Loss Rate per \$100 of payroll: _____ X Estimated Payroll: _____
 Excess WC Prem = Composite Rate: _____ X Estimated Payroll: _____
 Total: _____

5. General Liability Insurance Information:

Class Code	Labor Description	Rate	Premium

Other credit or debit applied: _____
 Other credit or debit applied: _____
 Other credit or debit applied: _____

GL Rates are based on:

- ___ Payroll
- ___ Contract Value
- ___ Receipts

Rates are applied:

___ per \$100 ___ per \$1000

6. Excess Liability Information:

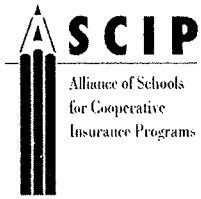
\$ _____ Premium
 Excess Premium is based on: ___ Flat Charge ___ Payroll ___ Contract Value ___ Receipts
 Rates are applied: ___ per \$100 ___ per \$1000

7. Subcontracted Work associated with this Contract:

Subcontractor Name	Contract #	Contract Amt	Contact Name	Contact Phone #

I hereby warrant that this worksheet accurately reflects the total projected insurance costs (for bidder and all subcontractors associated with this work) that would apply if my regular insurance program were to provide coverage for this work. Attached are the worksheets for the subcontractors associated with this work.

Signature: _____ Date: _____
 Printed Name: _____
 Title: _____



**ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS
(ASCIP)**

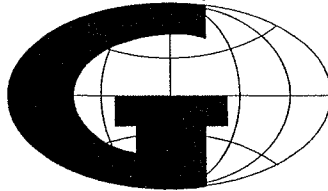
**OWNER CONTROLLED INSURANCE PROGRAM
(OCIP) MANUAL**

DISTRICT

Site Code: tbd

PREPARED BY:

**ARTHUR J. GALLAGHER & CO. – ORANGE COUNTY
15 ENTERPRISE, SUITE 200
ALISO VIEJO, CA 92656**



CONTRACTOR INSURANCE MANUAL

ASCIP - OCIP

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I. INTRODUCTION

The District has implemented an Owner Controlled Insurance Program (OCIP) for the construction of this project. This manual was prepared by Arthur J. Gallagher & Co., who is the insurance broker and OCIP Administrator for this project. The manual is designed to identify, define and assign responsibilities for the administration of the OCIP.

What this Manual Does:

- Generally describes the OCIP
- Identifies responsibilities of the various parties involved in the OCIP
- Describes some audit and administrative procedures
- Provides answers to basic questions about the OCIP

What this Manual Does Not Do:

- Provide coverage interpretations. The actual terms and conditions of the OCIP policy will determine coverage.
- Provide complete information about coverages
- Provide answers to specific claims questions.

Certain insurance coverages are being provided for the term of your contract at no cost to you. This manual details the coverages provided, the steps necessary to enroll, and the procedures in the event of a claim. Since the District will pay the insurance premiums for the OCIP coverages described in this manual, you should notify your insurer(s) to delete from your insurance program charges and coverage for the on-site activities of this Project that are covered under the OCIP.

Note: Insurance coverage and limits provided by the OCIP are specific to this project. Your insurance representative should review this information. Any additional coverage you may wish to purchase will be at your option and expense.

The District reserves the right to terminate or modify the OCIP or any portion thereof. If the District exercises this right, Enrolled Contractors and Subcontractors of any tier will be provided notice as required by the terms of their individual contracts. At its option, the District may procure alternate coverage or may require Contractors and Subcontractors of any tier to procure and maintain alternate insurance coverage.

To enroll in the program, the "Request for Insurance" Form 2, included in this manual, must be completely filled out and returned to Arthur J. Gallagher & Co. along with the Insurance

Certificate described in Section IV, Enrollment Procedures. Coverage under the OCIP is mandatory but not automatic for all eligible Contractors. Your participation in the OCIP is not complete until you receive confirmation from the OCIP Administrator at Arthur J. Gallagher & Co.

Since your Subcontractors will also be covered by the OCIP while performing work at the project site, it is important that you provide a list of all subcontractors to the Construction Manager and Arthur J. Gallagher & Co. Once identified, your subcontractors will receive a copy of this manual.

Should you have any questions regarding the OCIP, please contact:

Heather Lawson
(800) 877-8218 ext. 2205
(866) 741-2481 Fax

Arthur J. Gallagher & Co.
National Wrap up Administration
12444 Powerscourt Drive
St. Louis, Mo. 63131

Arthur J. Gallagher & Co.
15 Enterprise, Suite 200
Aliso Viejo, CA 92656
(949) 349-9800

Sue Lezatte	ext. 840
John G. Chino	ext. 827
Bruce Beardsley	(949) 759-8355

ASCIP, the District and Arthur J. Gallagher & Co. are committed to safety on the job site, and expect all contractors to share in this commitment.

II. COVERAGE SUMMARY

This section outlines the coverages provided for you by the OCIP. The District makes no warranty or representation that the OCIP coverages constitute an insurance portfolio, which adequately addresses all the risks faced by any particular contractor. Permission is granted by the District should you desire to supplement coverages provided by the OCIP at your sole expense.

Disclaimer: The information in this manual is intended to outline the OCIP. IF any conflict exists between this manual and the OCIP insurance policies or Contract Documents between the District and Contractor, the policies or Contract Documents will govern.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Insurance Carrier:	Liberty Mutual Insurance Company
Policy Term:	Date of Contract until project completion as set forth in Exhibit I
*Named Insured:	ASCIP (Alliance of Schools for Cooperative Insurance Programs and any tier of contractor, subcontractor and sub-subcontractors thereof, or other entity or person while performing work at an ASCIP project and for whom the Owner has agreed by contract to provide an Owner Controlled Insurance Program).
Interest:	Covering only on-site operations related to the ASCIP project.
Limits of Liability:	Workers' Compensation Statutory Benefits - Applicable States
Employers Liability:	Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease \$1,000,000 Policy Limit
Coverage Exclusions:	Contractual liability Punitive or exemplary damages Injury to illegally employed persons (under certain circumstances) Injuries covered by the workers' compensation statute or similar laws Intentional injury Injuries sustained outside the United States, its territories or possessions, or Canada, except with respect to citizens of the United States or Canada who are temporarily outside of these countries Employment-related practices Fines or penalties imposed for a violation of a federal or state law Injuries covered under a federal compensation act Designated Workplaces Exclusion Endorsement

* There will be a separate policy issued to each contractor or subcontractor as individual Named Insured. You will receive your policy after all the necessary forms have been completed and your enrollment has been confirmed. The OCIP Insurance Carrier will track Worker's Compensation losses associated with this project along with your payroll and will submit this information for inclusion in the calculation of your Experience Modifier.

NOTE: This policy applies only to operations related to the project conducted at the location designated below and operations necessary or incidental thereto:

DISTRICT

Coverage Extensions:

Voluntary Compensation
USL&H Coverage - If Any
Other States Coverage
Voluntary Compensation
Broad Named Insured
Knowledge of Occurrence
Unintentional Failure to Disclose Hazards
Maritime Exclusion
Notice of Occurrence
Joint Ventures as Insureds

COMMERCIAL GENERAL LIABILITY

Insurance Carrier: Liberty Mutual Insurance Company

Policy Term: From start of project until completion plus 10 years completed operations.

Named Insured: (1) Alliance of Schools for Cooperative Insurance Programs (ASCIP)
And
(2) All tiers of contractors, subcontractors and sub-subcontractors as their interests may appear, who work on the project and for whom ASCIP Member as agreed by contract to provide coverage under the Owner Controlled Insurance Program.

Interest: This policy applies only to operations related to the project conducted at the location designated below and operations necessary or incidental thereto:

**MANHATTAN BEACH UNIFIED SCHOOL DISTRICT
Mira Costa High School
1401 Artesia Boulevard
Manhattan Beach, CA 90266**

Limits of Liability: Primary:
 \$4,000,000 General Aggregate, per project
 \$4,000,000 Products/Completed Operations Aggregate
 \$2,000,000 Personal Injury and Advertising Injury
 \$2,000,000 Each Occurrence
 \$ 100,000 Fire Damage (any one fire)
 \$ 5,000 Medical Payments (each accident)

Coverage: Products/Completed Operations - coverage to be extended for 120 months after completion of all work at project site.
 Breach of Contract (Defense Costs Only) \$50,000
 Crisis Intervention Coverage \$250,000
 Blanket Contractual
 Blanket Contractual of "X", "C", and "U" Hazards
 Non-Owned Watercraft coverages
 Incidental Medical Malpractice
 Fellow Employee Coverage
 Unintentional Failure to Disclose Hazards
 Notice of Occurrence Endorsement (see Coverage Glossary)
 Knowledge of Occurrence Endorsement (see Coverage Glossary)

Limitations: This policy **does not** apply to any of the following as Insureds:

- (1) Any person or organization while fabricating or manufacturing materials away from the designated locations,
- (2) Any contractor, subcontractor, supplier, vendor, or common carrier who will have employees engaged in work at the project location who are not provided Workers' Compensation and Employer's Liability coverage under the Owner Controlled Insurance Program,
- (3) Any architect, engineer, or surveyor and their consultant, relating to professional liability,
- (4) Any other person or organization while transporting equipment to or from the designated location,
- (5) **Any person or organization that has not completed enrollment in the OCIP.**

Key Exclusions: Aircraft, Auto or Watercraft
 Employment Related Practices
 Broad Form Nuclear
 Engineers, Architects or Surveyors Professional Liability
 Asbestos
 Discrimination
 Total Pollution
 Exclusion of Certified Acts of Terrorism
 Alaska Exclusion of Certified Acts of Terrorism
 Nuclear Energy Liability Exclusion
 Exterior Insulation Finishing Systems
 Fungi, Bacteria or Mold
 Abuse or Molestation
 Rip & Tear
 Professional Liability

COVERAGE GLOSSARY

Notice of Occurrence

The rights of the Named Insured shall not be prejudiced under this policy, if there is a failure to give notice of an occurrence solely due to the Insured's reasonable belief that bodily injury or property damage is not covered under this policy.

Knowledge of Occurrence

Coverage is to be modified so that it is understood and agreed that knowledge of an occurrence by the agent, servant or employee of the insured shall not in itself constitute knowledge to the insured unless the Insured's corporate insurance department shall have received first notice from its agent, service or employee.

Unintentional Non-Disclosure of Hazards

The unintentional failure of the Named Insured to disclose all hazards existing as of the effective date of this policy shall not prejudice any insured with respect to the insurance afforded by the policy.

EXCESS LIABILITY

Insurance Carrier: Westchester Surplus Lines Insurance Company

Policy Term: From date bound until project completion plus 10 years completed operations

Named Insured: Alliance of Schools for Cooperative Insurance Programs (ASCIP) and all tiers of enrolled contractors and subcontractors

Interest: Coverage in respect of the Insured's on-site operations, solely with respect to the construction of the specified ASCIP projects.

Limits of Liability: \$25,000,000 per Occurrence
\$25,000,000 in the Aggregate

Conditions: Terms and conditions per policy on file with ASCIP and the District

Exclusions: Asbestos
CCC (R&P)
Discrimination
Aircraft products
Employment related practices
Total pollution
Nuclear
Professional liability
Violation of communication laws

CONTRACTORS POLLUTION LIABILITY

Insurance Carrier: Liberty Surplus Insurance Corporation

Policy Term: July 1, 2010 to July 1, 2013

Named Insured: (1) Alliance of Schools for Cooperative Insurance Programs
(ASCIP)
and
(2) All tiers of contractors, subcontractors and sub-subcontractors as their interests may appear, who work on the project and for whom ASCIP Member as agreed by contract to provide coverage under the Owner Controlled Insurance Program.

Limit of Liability \$5,000,000 Each Claim
\$5,000,000 Policy Aggregate

Notable Endorsements & Exclusions:

Service of Suite Clause – California
Exclusion of Certified Acts of Terrorism
Exclusion of Terrorism
U.S. Economic Trade Sanctions Endorsement
Biological Contaminants (Mold) Coverage Extension
(Without Residential and Faulty Work Exclusions)
Bodily Injury – Amendment of Definition
Cancellation – Variable Minimum Earned Premium
EIFS Endorsement
Non-Owned Disposal Site Coverage Endorsement
Schedule of Insureds – School Districts for whom coverage will be provided will be scheduled
Transportation Endorsement
Self Insured Retention Endorsement
Owner Controlled Insurance Program Endorsement
Contractual Liability
Employers Liability

III. COVERAGES NOT INCLUDED IN THE OCIP

1. Automobile Insurance

The OCIP does not include Automobile Liability and Physical Damage Insurance for licensed vehicles.

2. Off-Site Workers' Compensation

The OCIP only covers work-related injuries occurring at the work site. It does not cover Workers' Compensation risks associated with your other jobs or activities.

3. Off-Site General Liability

The OCIP only covers third-party liability claims arising from activities at the work site. It does not cover liability risks associated with your other jobs or activities.

4. Tools, Equipment and Machinery

The OCIP does not cover loss of, or damage to, your tools and equipment at the job site. Nor does it cover your employee's tools or equipment. Other property such as scaffolds, machinery, crane, earth-moving equipment, consumables, office trailers, tool sheds and any other temporary structures not intended to become a permanent part of the project is not covered under this OCIP.

Property in transit, including while at contractor's shops during fabrication and/or at temporary storage locations, is not insured.

5. Professional Liability Insurance

The OCIP does not include Professional Liability Insurance of any kind.

6. Pollution Legal Liability Insurance

The OCIP does not include Pollution Legal Liability Insurance of any kind.

IV. ENROLLMENT PROCEDURES

1. Complete attached application (Request for Insurance Form 2) and fax or (e) mail to:

Heather Lawson

Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, Mo. 63131
(800) 877-8218 ext. 2205
(866) 741-2481 Fax
heather_lawson@ajg.com

2. Attach a certificate of insurance in accordance with the OCIP enrollment provisions in the General Conditions evidencing primary Auto Liability and Workers' Compensation, and General Liability for Project-Related Operations performed away from the OCIP Project Site. *Contact your Insurance Agent for this certificate (a sample is included). It is your responsibility to notify your Insurance Agent to exclude all work to be done at this Project Site from your regular GL and WC policies.*
3. Arthur J. Gallagher will send a Certificate of Insurance evidencing your coverage under the ASCIP/OCIP program. This certificate is required by the District to obtain access to the job site. You should keep this certificate as evidence of your participation in the OCIP. It may be required by your regular insurance company to avoid duplication of insurance charges.

Article 6 Form Completion Instructions

(a) Insurance Application

It will be the responsibility of each contractor to see that each of its subcontractors complete the required forms. Failure of a subcontractor to complete these forms could result (at Owner's discretion) in payments to contractor and/or subcontractor being withheld.

The forms are used to determine a firm's eligibility for coverage under the CIP. Completion of the forms does not guarantee enrollment into the program.

FORM 2: CIP Insurance Application

This form must be submitted to AJG Co. For each contract issued by the successful Contractor and/or Subcontractor prior to site mobilization. AJG Co. Will determine eligibility and issue a certificate of insurance showing the insurance coverage being provided under the CIP.

COMPLETION INSTRUCTIONS

1. Contractor/Subcontractor Information:

- Fill in your company's complete legal name and d.b.a. including names of partners, sole proprietor's name, or joint venture partners.
- Fill in your company's complete address.
- Fill in name of field, payroll and insurance contact information: name, telephone, fax number and email address.
- Fill in your federal identification number and SIC code.
- Input your experience mod effective date
- Input your Bureau (NCCI) ID number
- Input your workers compensation policy period
- "Circle the appropriate field describing status

2. Bid Information:

- Fill in type of services your firm will be doing at the project site.
- Fill in the Bid Pack number
- Fill in any contract or specification number under which your contract falls.
- Fill in the estimated start date of your work.
- Fill in the estimated completion date of your work.
- Fill in the dollar amount of your contract.
- Fill in the dollar amount of your contract that you will be subcontracting to others.
- Fill in the dollar amount of your payroll for work performed by your own labor.

Article 6

3. **Workers' Compensation Insurance Information:**
 - Identify the Workers' Compensation Labor Descriptions - Can be obtained from your Workers' Compensation policy.
4. **WC Class Code Number:**
 - Fill in appropriate class code - Can be obtained from your Workers' Compensation policy or from your insurance agent.
5. **On Site Job Hours:**
 - Fill in the estimated on-site man-hours by workers' compensation classification
6. **Wage Rate:**
 - Fill in the applicable wage rate by workers' compensation classification.
7. **Payroll Estimate:**
 - Fill in the estimated payroll at the job site per workers' compensation class code.
8. **Total On Site Hours:**
 - Fill the total on site hours
9. **Total Payroll:**
 - Fill in the total payroll
10. **Subcontractor Information:**
 - List the name of all subcontractors associated with your work at the project site
 - List the subcontractors contact name and telephone number
 - List the subcontractor's contract number and contract amount.

Alliance of Schools For Cooperative Insurance Program



Liberty Mutual Group

Form 2 – Insurance Application	WC Policy No. Assigned: _____
--------------------------------	-------------------------------

1. Your Company Name: _____ FEIN# _____ (Tax ID #)
 Address: _____ City: _____ State: _____ Zip code _____
 Your WC Experience Mod. Rating Factor: _____ Your Exp. Mod Effective Date: _____ (usually your WC effective date)
 Bureau ID # (NCCI): _____ Policy Period: From _____ to _____
 Status: Construction Manager General Contractor Subcontractor of (name) _____

Name	Phone#	Fax#	Email Address
Proj.Mgr.			
Payroll			
Insurance			
Safety			

2. Scope of Work to be performed: _____ Bld Pack #: _____ Contract #: _____
 Estimated Start date: _____ Estimated Completion Date: _____
 Total Contract Amount: \$ _____ Amount Subcontracted to Others: \$ _____
 Amount Self Performed: \$ _____ Payroll For Self Performed Work: \$ _____

WORKERS' COMPENSATION & EMPLOYER'S LIABILITY – For Self Performed Work at the Project Site

3. Labor Classification	4. WC Code	5. On-site Job Hours	6. Wage Rate	7. Payroll Estimate
8. Total Onsite Hours			9. Total Payroll	

10. List the Subcontractors and corresponding contract numbers and values associated with your work.

Name of Subcontractor	Contact Name	Phone No	Contract Number	Contract Amount

CONTRACTOR'S INSURANCE INFORMATION
 Each contractor must attach a certificate of insurance evidencing off-site coverage for Workers' Compensation, General Liability and Auto Liability coverage and indicate that your GL and WC coverages exclude your work on the Downey USD - Warren HS Mod-3052M - Phase 3 - Buildings O, P,Q,R,&S. Contact your insurance agent for this certificate. It is your responsibility to notify your insurance agent to exclude all work to be done from your regular WC and GL policies. This certificate must also name Alliance of Schools For Cooperative Insurance Program as an additional insured. A sample certificate of insurance is included with this package.

ASSIGNMENT BY CONTRACTOR OR SUBCONTRACTOR FOR SPONSOR CONTROLLED INSURANCE PROGRAM
 The undersigned, a contractor or subcontractor under construction contract with Alliance of Schools For Cooperative Insurance Program in consideration of the agreement of Alliance of Schools For Cooperative Insurance Program to arrange insurance and pay premiums as provided by said contractor for the contractor and for each subcontractor for any tier thereunder, and for other good and valuable consideration hereby assigns to sponsor all return premiums, premium refunds, dividends, and any monies due or to become due to the undersigned in connection with said insurance.

Authorized Contractor Representative _____ Date _____

This insurance application – Form 2, along with the off-site certificate of insurance must be sent to:

Tracey Lohse
 12444 Powerscourt Drive
 Suite 500
 St. Louis, MO 63131
 Telephone: (800) 877-8218 x2190
 Fax: (866) 439-3482
 Email Address: tracey_lohse@ajg.com

_____ Approved By _____ Date

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
01/01/1001

PRODUCER Your Insurance Agent	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Your Company Name	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Your Insurance Company</td> <td></td> </tr> <tr> <td>INSURER B: Your Insurance Company</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Your Insurance Company		INSURER B: Your Insurance Company		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: Your Insurance Company													
INSURER B: Your Insurance Company													
INSURER C:													
INSURER D:													
INSURER E:													

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A	<input type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	123456789	01/01/1001	01/01/1001	EACH OCCURRENCE \$ 1,000,000								
		GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000								
A	<input type="checkbox"/>	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ 0 BODILY INJURY (Per accident) \$ 0 PROPERTY DAMAGE (Per accident) \$ 0								
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$								
	<input type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
A	<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	123456789	01/01/1001	01/01/1001	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">WC STATU-TORY LIMITS</td> <td style="width: 50%;">OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 1,000,000</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$ 1,000,000													
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000													
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000													
		OTHER												

THIS IS A SAMPLE DOCUMENT ONLY
 Certificate of Insurance must be issued by your primary insurance agent and include the specific wording shown at the bottom of this sample.
 Mail or fax to Arthur J. Gallagher & Co., OCIP Dept.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE:
 General Liability and Auto Liability name District and all of it's representatives, the Project Manager, Architect, IOR, and OCIP Administrator and all of their representatives as additional insureds and shall state the coverage is primary and non-contributory. Waiver of Subrogation is included on the General Liability, Workers Compensation and Auto Liability in favor of District and all of it's representatives, the Project Manager, Architect, IOR, and OCIP Administrator and all of their representatives.

CERTIFICATE HOLDER **CANCELLATION**

Alliance of Schools For Cooperative Insurance Program C/O: Arthur J. Gallagher & Company 12444 Powerscourt Drive Suite 500 St. Louis, MO 63131	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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ARTICLE 6

V. MONTHLY PAYROLL REPORTING AND FINAL AUDIT

The ASCIP/ District require that all contractors submit a monthly report of man-hours and payroll to Arthur J. Gallagher & Co. as per the following form.

"WE DON'T AND WON'T ACCEPT CERTIFIED PAYROLL REPORTS"

It is the Prime Contractor's responsibility to insure that this information is provided monthly by all subs.

THE CONTRACTORS AND ALL TIERS OF SUBCONTRACTORS WILL MAKE THEIR PAYROLL RECORDS AVAILABLE TO THE INSURANCE COMPANY AUDITOR AT ANY TIME DURING THE POLICY PERIOD AND UP TO THREE YEARS AFTER COMPLETION OF THE PROJECT.

Payroll: Payroll shall include the total remuneration and hours worked for all employees working on the Project Site, including the cost of board and lodging where it is considered part of an employee's earnings.

Payroll Records: All payroll records on ASCIP projects should be kept separate from all other work. This will make the audit process easier and will permit your regular insurance company to exclude this payroll from your off-site insurance charges.

Payroll Reports: Payroll reports should be sent to Arthur J. Gallagher within two weeks following end of prior month. You should use the same workers' compensation codes and classifications as shown on your current workers' compensation policy. Show only total hours and total payroll for each classification of employees. The report can be handwritten and faxed, hold the original copy in your file. If you have more than one contract and/or work order, please either 1) complete a Form for each awarding contractor or, 2) show which payroll applies to which contract.

Overtime: Earnings for overtime should be included only at the normal hourly rate. Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours. If you do not wish to make this conversion, include overtime and double time in the boxes provided on the form and we will calculate straight time for you. Job Hours reports should include overtime hours.

This form must be completed monthly by all contractors and subcontractors for **each** contract awarded. The completed form is to be faxed or mailed to us within two weeks following the end of the payroll-reporting period. The Contractor will be responsible to enforce the submission of this form by their subcontractors. Computer generated payroll reports are acceptable if similar information is provided. We will forward your company a supply of these forms.

Article 6 COMPLETION INSTRUCTIONS

1. **Month Ending:** Indicate the month for which you are reporting payroll. If payroll is not reported monthly, indicate payroll duration.
2. **Contractor Name:** Your firm's name.
3. **Your Contract With:** Insert whom your contract is with.
4. **Contract #:** Contract or Specification number under which your work may fall.
5. **Workers' Comp. Classification Code:** Can be obtained from your Workers' Compensation policy, your insurance agent or the information you supplied on the enrollment form you completed (Form 2).
6. **Man-hours and Payroll:** List man-hours and Gross Payroll including overtime, indicating the amount that is overtime or double time for each class code. List one cumulative monthly figure for all employees who fall under each class code. There is no need to breakout figure on a per employee basis.
7. **Sign and Date Form.**

DISTRICT

(Complete a Separate Form for Each Contract)

**CONTRACTOR OR SUBCONTRACTOR WILL NOT BE PAID IF THIS
REPORT IS NOT SUBMITTED WITHIN THE ALLOTTED TIME FRAME**

MONTH: _____ -OR- FROM: _____ to: _____

Article 6 MONTHLY ON-SITE PAYROLL REPORT

WRAP-UP INSURANCE PROGRAM

CONTRACTOR NAME: _____

WORKING UNDER CONTRACT WITH: _____

CONTRACT #: _____

WORKERS' COMPENSATION CLASSIFICATION CODES	GROSS RAW LABOR UNBURDENED PAYROLL	OVERTIME	DOUBLE TIME	Section 5.01 OURS
	\$	\$	\$	

* You do not need to list out individual employee payroll information. Summarize employee payrolls by class code and only report one payroll amount per code.

I CERTIFY THAT THE DATA SHOWN ABOVE IS CORRECT.

Signed _____ Title _____

Date _____

Return Form to: Heather Lawson
Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, MO 63131
(800) 877-8218 x2205
(866) 741-2481 Fax
heather_lawson@ajg.com

Note: Payroll reports are due to AJG Co. Prior to the 15th of every month. If you choose to fax your monthly payroll reports you will not need to mail a copy.



Section 5.02 FORM 6: Notice of Work Completion

Contractor needs to complete this form when submitting final payroll report for verification that all requirements of the Wrap-Up have been met.

1. **Contract #:** The Contract or Specification number(s) relating to the work at the Job Site(s).
2. **Contractor:** Construction Manager, Contractor, Subcontractor, Sub-subcontractor.
3. **Job Site:** The description of Project Site.
4. **Work Performed:** Type of work performed. (Example: Concrete, Excavation, Supervisory, etc.)
5. **Work Completed By:** Display names of Construction Manager, Contractor, Subcontractor or Sub-subcontractor as completing work.
6. **Date Contract Completed:** Fill in appropriate date the work on this contract was completed.
7. **Date Total Work Completed:** Fill in appropriate date that all work at the Site was completed. NOTE: If only one contract, these dates are the same. If more than one contract, this is the date **ALL** work at the Site is complete.
8. **Subcontractors or Sub-Subcontractors included in the work:** Names of all Subcontractors of all tiers and associated with the terminating Construction Manager, Contractor or Subcontractor of all tiers.
9. **Location of Payroll:** Location of payroll records for Construction Manager, Contractor, and Subcontractors of all tiers.
10. **Sign Form:** Signature of Project Manager.
11. **Return Completed Form:** Return the completed form to AJG Co. For our verification that Contractor or Subcontractor has complied with the Wrap-Up document requirements.



**NOTICE OF WORK COMPLETION
Form 6**

-
1. Contract #: _____
 2. Contractor: _____
 3. Job site: **DISTRICT** _____
 4. Work Performed: _____
 5. The following Contractor or Subcontractor has completed his Work at the Project Site and is being processed for final payment: (Indicate whether Contractor or Subcontractor)

_____ Contractor

_____ Subcontractor (Tier)

6. Date this contract completed: _____
7. Date total work completed: _____ Final Payroll Amount: _____
8. Final Contract Value: _____

Subcontractors of all tiers, which are included in this Work
(Add attachment if more space is needed)

Name _____

Name _____

Name _____

9. Final Insurance Audits may be made from payroll and other records located at:

Contractor: _____

Subcontractor: _____

10. (Signed By) _____
Authorized Representative

11. Return completed form to:

**Heather Lawson
(Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, MO 63131
(800) 877-8218 ext. 2205
866-741-2481 Fax**

VII. CONTRACTORS' SAFETY REQUIREMENTS

Minimum Safety Requirements:

Minimum qualifications for contractor enrollment are subject to the following:

- EMR- 1.25 mean average measured over a 5-year history
- Drug Program Pre-Assignment to job site
- 6' Fall Protection, harnesses and lanyards required in lieu of other protective means.
- Exceptions: ladders, scissor lifts, aerial baskets or scaffolding
- No more than 5 serious violations within 5 years
- No more than 2 serious repeat in 5 years
- No willful violations
- Hardhats & Safety Glasses are required at all times & other Personal Protective Eyewear (PPE) as required by work being conducted

Medical Provider Network:

Recent changes in California's workers' compensation law, specifically SB 899, now allow insurers and self-insured employers to direct injured employees to a medical provider network (MPN) for medical treatment if they receive state approval for the network.

In response to these changes, your employer has implemented a MPN, effective February 3, 2005 for any workers' compensation claims. Your employer has chosen the Liberty Mutual Group MPN that has been approved by the state. For all work-related injury or illness the physicians and providers in the Liberty Mutual Group MPN will provide you with medical treatment and services.

Below is a summary of the Liberty Mutual Group MPN and your responsibilities if you have a work-related injury or illness. You have also received more detailed information regarding the MPN with this letter.

PROVIDER PREDESIGNATION - You may pre-designate your physician(s) prior to injury if you have previously received care with the physician(s). The attached form (Form A) must be signed you and the physician(s) must agree to be your primary treating physician. If the physician(s) does not agree to continue as your primary treating physician then you will be required to seek medical care with a physician in the MPN.

IF YOU HAVE A WORK-RELATED INJURY OR ILLNESS - If you need emergency care go to the nearest medical center and contact the number above as soon as possible but no later than forty-eight hours after emergency treatment. For non-emergency situations, you may use either your pre-designated physician or contact your supervisor to find out which initial treating MPN provider is available. The MPN has primary treating physicians and providers that are available within 15 miles or 30 minutes or specialty care within 30 miles or 60 minutes from your work or residence. For initial treatment the MPN physician will schedule an appointment for you within 3 business days from the date you request treatment within the MPN. If you require additional services beyond your initial visit, you may use any provider, appropriate to your injury, within the MPN. If you have difficulty in getting an appointment or need any assistance in locating a provider contact your supervisor or the Claims Case Manager.

IF YOU ALREADY HAVE A WC CLAIM AT THE TIME YOU RECEIVE THIS NOTICE - Contact your supervisor. You may qualify to continue treatment with your current provider under the Liberty Mutual Group MPN Transfer of Care Plan if your condition is acute, serious or chronic, if treatment is for remission, is to prevent deterioration, is a terminal illness or for a scheduled

surgery or procedure that will occur within 180 days. Contact your supervisor or Claims Case Manager for questions or advice on your options.

OBTAINING AUTHORIZATION PRIOR TO TREATMENT - Your treating physician must obtain prior authorization for medical treatment and services. The following requests should be directed through Liberty Mutual 's Utilization Management department by calling the toll-free number of 1-800-664-CARE (2273): Diagnostic tests, in-patient hospitalization, occupational therapy, out-patient surgery & procedures and pain management including; IDET and nucleoplasty procedures, injections, acupuncture, morphine pumps and spinal cord stimulators, physical therapy, psychiatric treatment and work conditioning and work hardening. The Liberty Mutual Utilization Review Unit will review your physician's treatment or service request to determine the medical necessity and will render a certified (approval) or non-certified (non-approval) decision. You and your physician will receive a utilization review determination notification letter. Non-utilization review treatment areas that the Liberty Mutual Claims Case Manager or Nurse Case Manager may review include: Durable Medical Equipment, Home Nursing Care, Medications, Office Visits, except psychiatric treatment, routine laboratory tests and treatment evaluations other than physical therapy, occupational therapy and chiropractic evaluations. For these non-utilization review treatment areas you will be notified as to the authorization or non-authorization of your physician's request by the Claims Case Manager or Nurse Case Manager.

APPEAL PROCESS FOR NON-CERTIFICATIONS - If your medical treatment or service request is non-certified you may request an appeal by following the Appeal instructions in the utilization review determination notification letter.

PHYSICIAN CHANGE AND REQUESTS FOR A SECOND OR THIRD OPINION - You may change physicians within the MPN at any time as long as the provider is appropriate to treat your injury. If you dispute the diagnosis or treatment prescribed by your treating physician, you may request two additional opinions from other MPN physicians. To file a dispute, you must inform your employer or the Claims Case Manager that you dispute your treating physician's opinion and request a second or third opinion. You must select a physician or specialist from the list that your employer has of the available MPN providers and make an appointment with the second or third opinion physician within 60 days. You must notify the Claims Case Manager of your appointment date. If the appointment is not scheduled within 60 days of receipt of the list of the available MPN providers, then you will have waived your rights to the second and third opinion process with regard to this disputed diagnosis or treatment of this treating physician. During this process, you must continue your treatment with your current treating physician or with another physician of your choice within the MPN. At the time of selection of the third opinion physician, if you dispute the second physician's opinion, the Claims Case Manager will notify you about the Independent Medical Review process and provide you with an "Application for Independent Review" form. If you need assistance contact your supervisor or your Claims Case Manager.

TERMINATED MPN PROVIDERS AND CONTINUITY OF CARE - If your physician terminates from the MPN, we will advise you on your options for continued treatment as approved under the Liberty Mutual Group MPN Continuity of Care Plan. In some instances, the terminated physician may continue to treat you through the Continuity of Care plan. Copies of the plan are available upon request. Contact your supervisor or Claims Case Manager if you have questions or need advice on your options.

CONFIRMATION OF RECEIPT OF NOTIFICATION INFORMATION - In order to confirm that you have received appropriate notification regarding the Liberty Mutual Group MPN please complete and sign the attached form (Form B). Form B must be returned to your supervisor or Claims Case Manager at the time you first receive employee notification information about the MPN. This may occur at the time your employer distributes information about the MPN, at the time of hire, at the time of your report of injury or at the time you transfer into the MPN.

For any questions relating to the MPN, Compensability, Benefits, Continuity of Care Plan or Transfer of Care Plan please contact your supervisor or your Claims Case Manager.

To report a workers' compensation injury or illness, please immediately contact your employer or the Claims Case Manager at the above listed telephone number.

Safety Programs

Each contractor will have a written safety program on the job site.

- Each prime contractor is completely responsible for compliance of all its sub-contractors safety requirements.
- District Project Construction Manager will be provided with a copy of all programs.
- Each contractor will maintain on-site a written Hazard Communication/Employer Right-to-Know Program. A copy will be provided for District's Construction Manager.
- Each contractor's safety activities will be audited based on requirements of its own safety program. Certain minimum standards will apply.
- Subcontractors or sub-subcontractors, which may not now have a written program, may elect to fall under their prime's safety program.
- Should that option be used, each sub or sub-sub is required to submit a letter to the District's Construction Manager indicating it will use that option, that he has a copy of the program and is familiar with the safety requirements under that program and intends to comply with it. Those subs and sub-subs will be held to the same standard as the prime whose program they elect to use.
- Should a prime or subcontractor not currently have a written safety and hazard communication program, Arthur J. Gallagher & Co. will provide an outline of a generic program for use by the contractor in structuring its own version, should it chose.
- Straight adoption of these programs will not be an acceptable option. Each contractor's safety program must be tailored by that contractor to reflect the specific exposures encountered by its tradesmen. Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company will offer assistance in this area if requested.
- All contractors should submit their safety programs to the District's Construction Manager before they begin work.

Safety Committee

Each prime and those major subcontractors selected by the ASCIP's Construction Manager will appoint a Safety Coordinator.

- Safety Coordinators will be required to attend a Safety Training Session by Arthur J. Gallagher & Co. and Liberty Mutual Insurance at the time of the pre-construction conference.
- The Safety Coordinators will form the Safety Committee.
- Safety Committee Meetings will be held as called by the District's Construction Manager. These meetings will usually occur once each month. Attendance by Safety Coordinators is mandatory.
- Safety Coordinators will be required to accompany Arthur J. Gallagher and Liberty Mutual on tours of the job site for the purpose of training in hazard recognition.
- Superintendents/supervisors will be permitted to act as Safety Coordinators.

Accident Investigations

Each contractor and subcontractor is required to submit written accident investigations.

- Liberty Mutual Insurance Company and/or Arthur J. Gallagher representatives will make accident investigation forms available for any contractor who does not currently have them.
- Arthur J. Gallagher and/or Liberty Mutual Insurance Company representatives will review all accident investigation reports for quality.

Safety Meetings

Each contractor, subcontractor and sub-subcontractor is required to conduct safety meetings on the job site as directed by its established safety program.

- Minimum standards for number and quality of these meetings will be established for the job.
- A notebook of safety talk topics will be maintained the Construction Office for those companies who wish access to additional topics.
- Joint safety meetings may be conducted by or with the prime and/or other subs.
- The resulting safety meeting report must clearly identify each employee listed - by contractor, subcontractor or sub-sub.
- All safety-meeting reports will be reviewed by safety representatives from Arthur J. Gallagher & Co. and/or Liberty Mutual Insurance for quality and timeliness. The results of those reviews will be submitted to ASCIP's Construction Manager for his actions.

Self-Inspections

Each prime and subcontractor must conduct job-site inspections on a regular basis. While these inspections may conform to the requirements of the contractor's own safety program, they are subject to minimum standards established for the job.

- Joint inspections or inspections conducted by a prime contractor for a sub must be identified as such. Documentation of these inspections must clearly identify the name of the person who did the inspection and each of the contractors, subcontractors, and sub-sub for whom the inspection was made.
- Inspection follow-up will be performed by each contractor to ensure corrections have been accomplished.
- The quality of inspections will be audited by Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company loss control personnel and results of those audits provided to the ASCIP Member's Construction Manager for his action.

Job Surveys

- Liberty Mutual Insurance and/or Arthur J. Gallagher & Co.'s representatives will conduct job-site surveys monthly, in the company of the members of the Safety Committee for the purpose of training these individuals in hazard recognition.
- Suggestions and recommendations resulting from those surveys will be discussed with contractor representatives at the time of the survey where appropriate. Recommendations and suggestions will be discussed during the regular monthly Safety Committee Meetings.
- Findings will be submitted in the loss prevention report directed to the ASCIP Member's Construction Manager for his action.

Record Keeping and Files

IF IT IS NOT RECORDED IN THE PROJECT'S CONSTRUCTION OFFICE, IT HAS NOT BEEN COMPLETED!

The following required documentation must be in the contractor's safety file in the ASCIP Member's Construction Office. Representatives of Liberty Mutual and Arthur J. Gallagher will review safety program documentation. It is very important that any contractor with questions regarding record keeping contact ASCIP's Construction Manager, Arthur J. Gallagher & Co. or Liberty Mutual Insurance Company's loss control representative for clarification.

The following documentation is required:

- A written safety program
- A written hazard/employee right-to-know program
- Material safety data sheets conforming to the above hazard communication program
- Job-site safety meeting reports
- Accident investigations
- Job-site inspections

File Audits

- Safety files will be reviewed by Liberty Mutual and/or Arthur J. Gallagher & Co.'s loss control representatives monthly.
- Comments as to the quantity and quality of contractor's documentation will be addressed to ASCIP Member's Construction Manager for his action.
- Contractors are encouraged to discuss safety record-keeping problems with the representatives of Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company.
- Arthur J. Gallagher & Co. and/or Liberty Mutual Insurance Company representatives will make a decision each month as to the contractor with the best quality records for the previous month. That information will be made known to ASCIP Member's Construction Manager for appropriate action relative to the job's safety incentive activities.

DISTRICT
Drug-Testing/Drug Free Workplace Program
Drugs, Alcohol and Other Prohibited Articles

POST ACCIDENT DRUG TESTING AND PRE-HIRE PROGRAM

Purpose

The General Contractor and/or Prime Contractor has a commitment to protect people and property and to provide a safe working environment. The purpose of this policy is to establish a drug-free, alcohol-free, safe, healthy work environment for each employee.

Policy

The General Contractor and/or Prime Contractor prohibits the use, possession, distribution, or sale on the project premises, facilities, or work places of any of the following: alcoholic beverages, intoxicants, drugs and related drug paraphernalia.

Employees must not report for duty or perform work while under the influence of any drug, alcoholic beverage, or intoxicant. Employees on the project premises may be subject to search as provided herein. Applicants and employees will be required to consent to drug/alcohol testing or an oral fluid drug test as provided herein.

Definitions

When used herein, the following terms will have the meanings given below:

- a. Company – **General Contractor and/or Prime Contractor** Company and sponsored joint ventures.
- b. Alcohol - Ethyl (Ethanol). References to use or possession of alcohol include the use of any beverage, mixture, or preparation containing alcohol.
- c. Drug - Any substance (other than alcohol) including prescription drugs which may impair mental or motor function; including, but not limited to, any psychoactive substance, controlled substance, marijuana, or designer or simulated drugs. This definition does not apply to prescription drugs which have been disclosed to the Company and the Controlling Employer by the employee and are approved for use within prescription limits.
- d. Employee - Any individual, salaried or hourly, who actually performs work for a Controlling Employer on the project premises.
- e. Controlling Employer - Any individual or firm that provides employees to perform work on the project premises and is responsible for their hiring, advancement, payment, discipline, and termination. This shall include all contractors, all subcontractors, and all sub-tier subcontractors who are enrolled in the OCIP Program.
- f. Applicant - Any individual who is referred or makes application for employment on the project premises.

- g. Project Premises - All parts of any office, work site, or other work location, including parking lots under the control of the **General Contractor and/or Prime Contractor** Company.
- h. Testing Facilities - A NIDA certified laboratory where a specimen can be tested for drugs and alcohol within threshold limits according to standards established by the U. S. Department of Transportation or oral fluid drug test which meets or exceeds the D.O.T. threshold.
- i. Contraband - Considered to include but not limited to the following: drugs, alcohol, and drug paraphernalia.
- j. Drug Paraphernalia - Any article for the use, storage, or sale of drugs.
- k. Accident - Any event resulting in injury to a person or property to which the Company believes an employee contributed as a direct or indirect cause.
- l. Incident - Any event which the Company determines has all the attributes of an accident, except that no harm was caused to personnel or property.

Right to Search

The Company has the right to search any personal effects, vehicles, lockers, baggage, lunch boxes, toolboxes, etc., for contraband. An individual who has notice of this rule and enters the project premises is deemed to consent to this safety procedure. Searches will be conducted on an "as needed" basis as determined after consultation with Company regional and corporate management. There will be an employee representative and/or other witnesses, which may include law enforcement officers, to all searches conducted by the Company.

An employee who refuses to submit to a search as described in this policy is subject to disciplinary action, up to and including immediate discharge by the Controlling Employer. Contractors and/or employees who refuse to submit to a search are subject to removal and denial of future access to the project premises.

An employee on the project premises, facility, or work place in possession of contraband is subject to disciplinary action, up to and including immediate termination by the Controlling Employer. Contractors and/or employees who are in possession of contraband are subject to removal and denial of future access to the project premises.

Prescription Drugs

Any employee using a prescription drug which may impair mental or motor function shall, as soon as possible, complete Section 3 of the Consent for Alcohol and Drug Test and Pre-Hire Form. For the safety of all employees, the Company may direct the Controlling Employer to not permit the employee on the project premises until released as fit for duty by the prescribing physician. The Company reserves the right to obtain a confirming medical opinion before allowing the employee to return to duty.

Employee Testing

After an accident or incident, the Company will ask the Controlling Employer to test all those involved. The Company will also ask the Controlling Employer to test employees when a reasonable suspicion exists that the employee has been using drugs or alcohol, or is in possession of contraband. Procedure for reasonable cause will consist of one supervisor observing employee demonstrating signs and symptoms of impairment. A second observation will be made by another supervisor independently of the first supervisor. Both supervisors must agree that the employee is exhibiting signs of impairment before the employee will be required to be tested. This test must be conducted in an approved clinic.

Discipline and Rehabilitation

All employees who refuse to submit to a drug and alcohol test, or who fail to pass a drug and alcohol test will be removed from the project premises by the Controlling Employer and will be referred to their personnel management for disciplinary action.

Confidentiality

The Company will take steps to maintain the confidentiality of information generated by the implementation and enforcement of this policy and these procedures. Disclosure will be made only in appropriate circumstances. The Controlling Employer shall be responsible for maintaining the confidentiality of all information generated by the implementation and enforcement of this policy and these procedures for their own employees. The Company shall have the right to audit compliance with this policy and these procedures by the Controlling Employer, which shall include access to this confidential information.

Subcontractors and Suppliers

The Company and all Contractors will include the provisions of this policy and these procedures, or another acceptable program, in their contracts with subcontractors, suppliers, consultants, agents, and others involved in providing goods or services on the project premises, and will require that they do the same with respect to their lower-tier subcontractors, suppliers, etc.

Posting and Distribution

Significant sections of this policy and these procedures are available to each employee. The Company may revise and amend this policy and these procedures as required.

Procedures for Examination:

Post-Accident Screening When Required By the Company
(Personal injury or vehicle/equipment accident)

1. A **General Contractor and/or Prime Contractor** Company supervisor is to accompany injured **General Contractor and/or Prime Contractor** employee(s) or those involved in the accident or incident to the clinic or medical facility. A Controlling Employer's supervisor will be required to accompany their injured employee(s) to the medical facility. Controlling Employers shall certify any employee(s) involved in an accident or incident tested negative for drugs and alcohol prior to allowing them to return to the project Premises. The procedures, which follow, outline the steps necessary to assure proper handling of Company post-accident testing.
2. The **General Contractor and/or Prime Contractor** Company supervisor will take the employee to the industrial clinic.
3. If the injured employee refuses to give a specimen of body fluid, the supervisor is to call the Project Manager and/or Project Superintendent. The Project Superintendent and/or Project Manager are to advise the employee again that the refusal to submit to drug screening is a

violation of the Project Safety Plan's drug, alcohol and other prohibited articles safety policy and that refusal will result in termination.

4. If the injured employee continues to refuse to submit to drug screening, the doctor or clinic shall be advised to treat the employee for his/her injuries.
5. The supervisor should return to the project, meet with the Project Superintendent and Project Manager and prepare appropriate termination forms. Cause for termination should state - "Employee refuses to comply with written Project Safety Plan."
6. A copy of this termination form should be attached to the employee's First Report of Injury Form.
7. The doctor will sign all "chain of custody" documents and ship the specimen to the designated laboratory system.
8. The laboratory will run a confirmation test on the sample if the first test indicates a chemical in the system.
9. The employee will be contacted by the Medical Review Officer if there is a positive indication from the drug test. If there is need for additional contact, it will be by the Corporate Human Resources.
10. Results of all drug screenings and analyses must remain strictly confidential.
11. Employees must report all injuries immediately to their supervisor, whether the injury requires medical treatment or first aid only. Late reporting may result in denial of a claim.

Employee Agreement with Policy and Consent for Alcohol and Drug Tests

The following form is to be completed for all **General Contractor and or Prime Contractor** employees. All Controlling Employers shall obtain and submit to **General Contractor** a completed consent form from each employee who will be working on the project premises. This form can be attached to the employee's safety pledge form.

CONSENT FOR ALCOHOL AND DRUG TESTS POST ACCIDENT AND PRE- HIRE

To: _____
Name of General Contractor and/or Prime Contractor Company

From: Employee Name: _____ Occupation: _____

Social Security # _____ Company Badge # _____

Home Address _____ Phone () _____

1. As an APPLICANT, I hereby consent and agree to give specimens of my urine or oral fluid (saliva) to any medical facility, laboratory, medical person, or certified personnel designated by **General Contractor and/or Prime Contractor** or my employer. These specimens shall be used to detect the presence of alcohol (post accident only), marijuana and/or other drugs in my body. I further consent and agree that the results will be furnished to my employer by the testing facility, and my employer may inform the Union hiring hall (if applicable) which referred me of my pass/fail results.

2. If APPROVED for EMPLOYMENT or PRESENTLY EMPLOYED and in the event that I am directly or indirectly involved in a work-related accident or incident, or the company has reasonable suspicion of a drug or alcohol problem involving me, I consent and agree to testing for the presence of alcohol and drugs in my body. The testing facility is authorized to release the results of such tests to my employer. I, further acknowledge that I have received a copy of a summary of the **General Contractor and/or Prime Contractor** Expansion Project Safety Plan's policy on drugs, alcohol and other prohibited articles and agree to testing in accordance with this policy. If any tests and confirming results are positive, **General Contractor and/or Prime Contractor** Company may refuse to permit me access to the project premises. My signature below acknowledges that I have read and understand the foregoing statements and the consent given herein.

3. Are you, at the present time, taking any medicine, tranquilizers, sedatives, pills, capsules, tablets, or liquids that may impair your ability to safely work on the project premises?

YES __. NO __.

Medication

Prescribing Doctor

READ BEFORE SIGNING
IF YOU DON'T UNDERSTAND, ASK FOR AN EXPLANATION.

4. Signature: _____ Date: _____

Date: _____
Employer's Authorized Company Representative

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Manhattan Beach Unified School District
325 South Peck Avenue
Manhattan Beach, California 90266
Attention: Steve Romines

WITH A COPY TO:

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall

**This document is recorded for the benefit of
Manhattan Beach Unified School District,
and recording fee(s) are exempt under
Government Code section 6103.**

SITE LEASE

For all or a portion of the following Site:

Mira Costa High School
1401 Artesia Boulevard
Manhattan Beach, CA 90266

By and between

Manhattan Beach Unified School District
325 South Peck Avenue
Manhattan Beach, California 90266
Attention: Steve Romines

And

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall

Dated as of September __, 2011

SITE LEASE

This site lease ("Site Lease") dated as of September __, 2011 ("Effective Date"), is made and entered into by and between the Manhattan Beach Unified School District, a school district duly organized and validly existing under the laws of the State of California, as lessor ("District"), and Bernards Bros., Inc., a California corporation duly organized and existing under the laws of the State of California, as lessee ("Developer") (together, the "Parties").

WHEREAS, the District currently owns Mira Costa High School, a parcel of land located at 1401 Artesia Boulevard in Manhattan Beach, CA 90266, as more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference ("School Site"); and

WHEREAS, the District desires to provide for the modernization of certain facilities on portions of the School Site. ("Project"); and

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

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

WHEREAS, the Board of Education of the District ("Board") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site to Developer and by immediately entering into the Facilities Lease under which District will lease back the Project 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, the District is authorized under Education Code section 17406 to lease the Project Site to Developer and to have Developer develop and cause the construction of the Project thereon and lease the Project 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, based upon a finding that it is in the best interest of the District to do so; and

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

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

- 1. Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.
- 2. Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
 - 2.1. Exhibit "A":** Legal Description of School Site
 - 2.2. Exhibit "B":** Description of Project Site
- 3. Lease of the Project Site.** The District hereby leases to the Developer, and the Developer hereby leases from the District the Project 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 concurrently with the execution of this Site Lease.
- 4. Leaseback of the Project Site.** The Parties agree that the Project 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 Project 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 Project Site;

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

7.3.3. Re-let the Project Site.

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

9. Improvements. Title to all improvements made on the Project 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 Project Site by the Developer to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site, and the Developer shall continue to have a leasehold estate in the Project 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 Project 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 Project 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 Project 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 Project Site, it will not commit, suffer or permit any waste on the Project Site, and that it will not willfully or knowingly use or permit the use of the Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project 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:

Manhattan Beach Unified School District
325 South Peck Avenue
Manhattan Beach, California 90266
Attention: Steve Romines
Telephone: (310) 318 - 7345
Facsimile: (____) ____ - ____

If to Developer:

Bernards Bros., Inc.
555 First Street
San Fernando, CA 91340
Attention: Jack A. Hall
Telephone: (818) 898 - 1521
Facsimile: (818) 365 - 0065

With a copy to:

Samuel R. Santana
Dannis Woliver Kelley
301 East Ocean Blvd., Suite 1750
San Francisco, CA 94105
Telephone: (562) 366-8500
Facsimile: (562) 366-8505

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 term or condition 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 venue shall be in the County within which the School Site is located.

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

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

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

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

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

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

36. Force Majeure. A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such non performance will not be a default hereunder or a grounds for termination of this Site Lease.

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

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

ACCEPTED AND AGREED on the date indicated below:

Dated: September __, 2011

Dated: September __, 2011

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

BERNARDS BROS., INC.

By: _____
Steve Romines

By: _____
[TYPE NAME]

Title: Assistant Superintendent,
Administrative Services

Title: [INSERT TITLE]

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

State of California
County of _____

On _____ before me, (here insert name and title of the officer), personally
appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____

—

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF SCHOOL SITE

Attached is the Legal Description for:

Mira Costa High School
1401 Artesia Boulevard
Manhattan Beach, CA 90266

The real property is situated in the State of California, County of Los Angeles and is described as follows:

[INSERT LEGAL DESCRIPTION]

EXHIBIT "B"

DESCRIPTION OF PROJECT SITE

Attached is the Description for portion of the School Site that is subject to this Site Lease and upon which Developer will construct the Project:

**MINUTES TO BE APPROVED OF THE MEASURE BB OVERSIGHT COMMITTEE
MANHATTAN BEACH UNIFIED SCHOOL DISTRICT
325 S. Peck Ave., Manhattan Beach, CA 90266
April 11, 2011
7:00 p.m.**

The Members of the Measure BB Bond Oversight Committee held its regularly scheduled meeting on Monday, April 11, 2011, at 325 S. Peck Avenue, Manhattan Beach, California. The following were present:

- | | |
|---|--|
| Members of the Committee | The following committee members were present unless indicated absent:

Ed Lear, George Reppucci, Michael Kling, Tim Lilligren, Kathleen Paralusz (absent), Noel Palm, Rod Spackman, Tim Flake, Gary Osterhout, Robert Daviduk (absent), Kimberly Robinson (absent), Jim Sepanek, and Rachel Vandenberg (absent). |
| District Personnel | Steve Romines |
| Board of Trustees | Ida VanderPoorte |
| Call to Order | The meeting was called to order by Mr. Lear at 7:05 p.m. |
| Pledge of Allegiance | The Pledge of Allegiance was led by Mr. Lear. |
| Announcements and Communications | No public comments were made. |
| Presentation | <ol style="list-style-type: none">1. Report by District of Detailed Measure BB Expenditures.

Steve Romines provided a summary of bond expenditures by category as of 3/4/11. The committee discussed the report. The lease/leaseback (“LLB”) contract went to the Board of Trustees on April 8, to start May 1. The District now believes the Construction manager contract is no longer necessary. Bernards is to provide the Construction Manager services gratis. Bernards will be compelled to conform the project charges to the price bid. There will be a special BOC meeting the Monday night (May 2) before the Trustees meeting (May 4) to decide the contract. The contract will be made available to the public the last week in April.

In respect to the numbers presented, Tim Flake commented that the difference in the \$451,662 item listed as “Audit Adjustment” and the \$456,000 figure in the audit report is a matter of over/short |

adjustments.

No additional action items resulted from the discussion.

1. Bond Oversight Subcommittees

George Reppucci commented that standing committees would be subject to the Brown Act. "Ad hoc" committees are likely not subject to Brown Act requirements. Discussion of developing specific subcommittees was decided to be deferred to the next meeting for agendaizing.

2. BOC Report for Activities through December 31, 2011

Reppucci passed out a typewritten sheet of adjustments he proposed for the Report, with Tim Flake amending the final version of the Report to reflect changes which met BOC consensus.

Moved by Tim Lilligren, second by Noel Palm to accept the amended report as discussed by the committee. The motion was passed by acclamation.

3. BOC Report for Activities through March 31, 2011

BOC discussion and action on this period's report followed the same sequence as for the December 31, 2010 report. Moved by George Reppucci, second by Jim Sepanek to approve as amended. The motion was passed by acclamation

George Reppucci thanked Tim Flake and Rachel Vandenberg for their time spent on the Reports, a sentiment to which all committee members concurred.

4. Approval of March 14, 2011 Bond Oversight Committee Minutes.

Motion to approve by Tim Lilligren; second by Tim Flake. Passed by acclamation.

Public Comments

No members of the public provided comments.

Items for Future Meetings

As discussed earlier in the meeting, the BoC will plan on meeting May 2 to review the Lease/Leaseback contract scheduled to be discussed by the Trustees on May 4.

George Reppucci would like to see Bernards' bid/proposal. Ida

VanderPoorte said Bernards could be invited to present their methodology for the bid. George Reppucci would like a change-order portion presented.

The BOC discussed whether to send out BOC agendas and collateral to members by e-mail only, with potentially attaching collateral via a website link. The committee decided that any member who wanted paper delivery should be able to receive such if expressly requested; otherwise the information will be sent in electronic form only. George Reppucci stated his preference for paper delivery.

Motion to adjourn passed by acclamation at 8:25 p.m.

Adjournment

Motion to adjourn passed by acclamation at 8:25 p.m.