



Agenda Item #: IV C: Action Item
Date: August 12, 2021
To: Magnolia Educational & Research Foundation dba Magnolia Public Schools (“**MPS**”)
Board of Directors
From: Alfredo Rubalcava, CEO & Superintendent
Staff Lead: MPS Audit/Facilities Committee
RE: Approval of MSA-1 Contract for Shade Structure Project

I. Proposed Board Motion

Staff recommends and moves that the Board approve the selection of M Bar C Construction for the design and construction of the shade structure that is a part of the Magnolia Science Academy—1 (“**MSA-1**”) middle school parking lot site improvement project (the “**Project**”) for up to \$400,000 (with design costs not to exceed \$25,000) and the execution of the agreement attached as Exhibit A, with such changes as MPS Staff may deem advisable or in the best interests of MPS.

II. Background

MSA-1 filed for and received a zone change for its parking lot parcels from the City of Los Angeles. As a condition to the zone change, MSA-1 agreed to make certain improvements to the parking lot parcel that serves the MSA-1 middle school building. See Exhibit B. They include the following: (1) the fixing of drainage on the middle school parking lot; (2) the creation of an open green space and a concrete pad with a solar shade structure; (3) fencing surrounding the entire MSA-1 parking lot parcels; (4) the creation of a track; and (5) the installation of modular outdoor restrooms. MSA-1 wishes to undertake these improvements because it will assist the school during the current pandemic to allow for activities to take place outside. Looking to the future, having a good recreation and outdoor space will benefit the students and may in fact attract more students to the campus.

III. Procurement

Franco Architects worked with Staff to solicit bids for the solar shade structure. Staff prepared a Request for Proposals and published it on the MPS website. See Exhibit C. Franco Architects targeted specific vendors to solicit proposals. After some back and forth conversations with a couple vendors, M Bar C was the only vendor that provided a proposal for the shade structure. Concurrently, Staff priced out the cost of a custom designed and built shade structure. A custom design would require a change order to



the Franco Architects contract as Franco was hired to help MPS secure a modular restroom. Note the language from the March 11, 2021 board report – “[f]or all proposals, all assume that the solar shade structure and the restroom structure will be “design build” or “modular”, meaning that a vendor will be identified and they will be responsible for designing and permitting the structure. Each design firm will assist in identifying vendors to provide these services.” We further sought input from a structural engineer and general contractor on the cost of building a custom designed solar shade structure. The cost of a custom designed solar shade structure is difficult to determine with the cost escalations in the construction industry; however, pricing was estimated at \$473,000. Staff believes that the M Bar C design is both attractive and functional and will allow MPS to lock in prices early. (See Exhibit D proposal). Staff expects that the shade structure will be constructed without solar panels and then when additional funding is available they will be installed.

IV. Conclusion & Budget Impact

Staff recommends that MPS sign a contract for up to \$400,000 with M Bar C for the solar shade structure that is part of the Project. The proposal is for \$340,000 however we expect some price increases due to some recent changes to the design, specifically, increasing the span of the shade

Staff intends to seek financing for the Project. Until such financing is secured, MSA-1 may need to pay for any expenses, for example, progress payments, out of its operating budget or its reserves. Such expenditure will not have a material impact on either MSA-1’s operating budget or its reserves.

Exhibit A _____ Prime Contract.....	Pg. 3
Exhibit B _____ Site Improvement Site Plan.....	Pg. 15
Exhibit C _____ RFP.....	Pg. 18
Exhibit D _____ M Bar C Design and Proposal.....	Pg. 87



Exhibit A

Prime Contract



M BAR C CONSTRUCTION™

THE STRENGTH BETWEEN SUN AND SHADE™

PRIME CONTRACT BETWEEN CUSTOMER & CONTRACTOR

This Agreement (“Contract”) is made this _ day of (“Date”),
between M Bar C Construction, Inc. (“Contractor”), located at 1770 La Costa Meadows Drive,
San Marcos, CA 92078 and (“Customer”), located at (“address”)

The work described in Section 1 below shall be performed exclusively in accordance with this
Contract, all plans, specifications and other mutually agreed to contract documents for the
project known as:

Project Name:

Project Address:

SECTION 1. SCOPE. The Contractor agrees to furnish all labor and other necessary services
required to complete the work as defined in the attached Contractor’s Proposal (“Project
Proposal”) in its entirety, attached hereto and made a part hereof.

SECTION 2. PRICE AND PAYMENT. The Customer agrees to pay the Contractor for the strict
performance of the work, the sum of: (“\$ Amount”) subject to adjustments for changes in the
work as may be agreed to in writing by the Customer and the Contractor, as may be required
under this Contract.

The Customer agrees to pay the Contractor in monthly progress payments for all work acceptably
completed. Payment shall be made on acceptable completion of the Contract where the work is
completed within a period of 30 days. Payment shall be made to the Contractor by the 10th of
the month following the date of any billing.

Irrespective of any other provision in this contract, it is the intent of the parties hereto that any
and all payments be made to subcontractor within 90 days of last day subcontractor provides on-
site labor in order to preserve lien rights in accordance with California statutory authority.

The Contractor shall not be required to proceed with the installation of the work if the payments
applying on same have not been made as specified in the Contract. In the event suit is filed by
the Contractor to collect any monies due hereunder or to enforce any other provisions of this
Contract, to the extent the Contract prevails in the suit the Customer agrees to pay all costs, and
the attorney's fees incurred to the extent authorized by applicable law or court rule.



In the event of a dispute, except as otherwise provided herein, the Contractor shall continue to perform its obligations under this Contract.

Contractor shall provide a Schedule of Values (“SOV”) outlining Contractor’s expected progress payment schedule in a format that includes the Project’s Phase, Percent Complete and Value of such percent complete.

Item No.	Description of Work	Scheduled Value
A	B	C
1	Notice to Proceed with Design	
2	Permits having been obtained	
3	PO issued for Materials	
4	Materials Delivered to Site	
5	Structural Mechanical Completion	
6	Electrical Mechanical Completion	
7	Substantial Completion	
8	Final Completion (Final AHJ Inspection)	
	TOTAL	

SECTION 3. ENTIRE AGREEMENT. This agreement represents the entire agreement between the Contractor and the Customer regarding the work described in Section 1 and supersedes any prior written or oral agreements or representations as to said work.

SECTION 4. TIME. Time is of the essence of this agreement. The Contractor shall provide the Customer with a progress and completion schedule, including any changes to that schedule agreed to between the Customer and the Contractor. Customer shall not unreasonably delay agreement to said schedule.

SECTION 5. CONTRACT DOCUMENTS. This Contract and any attachments referenced herein are in accordance with the requirements of the project and from verbal information which Contractor has received from the Customer (all such verbal communication must be confirmed in writing to the Customer and confirmed by Customer before it is considered authorized), its



representative or agent, and written plans and specifications furnished by Customer or Contractor and agreed to by the parties. The Contractor assumes no responsibility as to the accuracy of such plans, specifications or other document provided by the Customer. Contractor shall not be bound by any documents which have not been furnished to Contractor prior to signing this Contract unless otherwise agreed to in writing.

It is further understood and agreed that the Contract does not include any labor or materials not specifically mentioned herein. Unless otherwise provided in the plans and specifications, the Contractor shall have the right to select all materials. When specified materials are unavailable, the Contractor shall, with Customer's prior written consent, have the right to substitute for such specified materials other materials of equal or better quality.

SECTION 6. OWNERSHIP OF DOCUMENTS. Contractor's Proposal, including any plans, specifications, drawings, or engineering data are furnished by the Contractor to the Customer in trust for determining the scope of the work to be performed and shall remain the property of the Contractor. They shall be immediately returned to the Contractor in the event the Contractor is not awarded the Contract to perform such work. Such plans, specifications, or other data cannot be used for the purpose of obtaining other bids or in connection with the installation. Contractor vests in Customer a limited irrevocable license to use the documents and work product in connection with Customer's operation and repair of the work and Contractor shall provide with a copy of the "as-built" plans related to the work.

SECTION 7. EXISTING SITE CONDITIONS. Working surface is assumed to be structurally sufficient to support all work activities such that damage from the weight of typical equipment expected for this scope of work, such as: reach forks, concrete trucks, drill rigs, etc. will not occur. Subcontractor will verify existing conditions on site prior to construction activities and will advise the Contractor of any concerns. Contractor acknowledges that normal tire marks caused by equipment during construction operations will occur and will not be required to be removed by Subcontractor. Any landscape or hardscape damaged by Subcontractor will be repaired by Subcontractor resulting from unavoidable and/or negligent action

It is a condition of this Contract that the Customer will assume any and all responsibility for any material or equipment not furnished by the Contractor, and that such will be of a type that is approved for the purpose unless otherwise specifically set forth in this Contract.

SECTION 8. DIFFERING SITE CONDITIONS. Contractor shall promptly notify the Customer in writing of any discovered conditions that Contractor may identify that were not readily observable by visual inspection of the site or that differ from conditions shown in any drawing, document or other information, if any, that Customer is required to deliver to Contractor,



however, nothing imposes a requirement of inspection on the part of Contractor to search for any defects, non-conformities, unknown or inconsistent conditions.

If the Contractor encounters subsurface or latent physical conditions or physical conditions at the site of any unusual nature differing materially from those ordinarily encountered in the trade upon standard industry inspection, or discovers any unforeseen or unknown physical conditions, differing materially from those indicated in the Contract documents, the Contractor will promptly notify the Customer. If such conditions cause an increase in the cost of, or the time required for, performance of the work, the Contract Price and the time for completion will be equitably adjusted for costs incurred including 15% profit and 10% overhead, and time lost to the extent supported by reasonable documentation.

The Customer shall promptly, so as not to unreasonably delay the Contractor's schedule of work, investigate any and all conditions that Contractor identifies and notifies Customer of such existence.

If the Customer finds that the worksite conditions do materially differ, or involve hazardous waste or toxic pollutants, the Customer shall cause a decrease or increase in the Contractor's cost of, or the time required for, performance of the affected part of the work by issuing a change order under the procedures described in the Contract.

SECTION 9. ALTERATIONS & CHANGES IN WORK. The work shall be subject to changes or additions, deletions or revisions by the Customer. The Contractor will be notified by receipt of written additions and/or revised drawings, specifications, exhibits or written orders.

Alterations or additional work ordered by Customer or their agent shall constitute an addition to this Contract. The Contractor shall not be obligated to perform changes in the work or additional work until the Customer has approved, in writing, the changes to the Contract price and the Contract time. All additions above and beyond the Contract Price and outside the general Scope of Work herein shall be adjusted including 15% profit and 10% overhead by the Contractor.

If any additions outside the scope to the Contract are ordered and/or necessary, the Contractor shall provide the Customer with a Change Order and/or billing the amount to be paid for the same including overhead and profit. If a change requested by the Customer shall reduce the amount of labor or material, or both, that the Contractor shall furnish to the project, the Contractor shall provide a deductive Change Order and/or billing to the Customer. The Contractor shall receive written orders for all additional work or changes, signed by the Customer representative or their authorized agent before proceeding with such additions or changes.



Payments for additions or changes shall be made under the same terms and conditions provided under this Contract. Approvals by Customer shall not be unreasonably withheld or delayed.

Whenever an adjustment in the Contract Price or Contract time is required due to a material change in site conditions, errors in the plans and specifications, or other circumstances beyond the control of Contractor (including lack of worksite access, weather, fires, floods, strikes, acts of God, natural disasters, or acts of third parties), the Contractor shall submit to the Customer within a reasonable time a detailed estimate, with supporting calculations, pricing and adjustments in the schedule of the change to the Contract Price and the Contract time. Pricing of the adjustment shall be in accordance with the pricing structure of this Contract. However, to the extent that such pricing is inapplicable, cost of the change or the amount of the adjustment shall be determined on the basis of the cost to the Contractor for labor and material plus Contractor's standard 15% profit and 10%

SECTION 10. DELAYS AND TIME EXTENSION. Contractor will not be held liable for damages or delay which arises out of causes beyond its reasonable control. In the event the work is delayed by such causes, the time of completion will be extended in proportion thereto and any premiums for overtime work requested in writing by the Customer shall be reimbursed to the Contractor.

Notwithstanding anything to the contrary contained herein, neither party shall be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest. Notwithstanding the foregoing, in the event of such an occurrence, each party agrees to make a good faith effort to perform its obligations hereunder.

Notwithstanding the foregoing, Owner/Contractor agrees to a 10 day review and approval period for all submissions that affect schedule and/or payment.

In the event of extraordinary demands placed on the Contractor due to delay, disruption, hindrance and other causes beyond Contractor's reasonable control, Contractor reserves the right to file a claim for extension of time.

The Contract Price has been determined on the basis of straight time and normal work week. No overtime will be worked unless ordered by Customer or their representative. In the event overtime is worked, the overtime premium rates prescribed by applicable law will be paid as an extra.



Liquidated Damages shall not be assessed to Contractor or Customer under any circumstances.

SECTION 11. SUSPENSION OF WORK. If any payment is not made to Contractor as required under this Contract for an amount not in dispute and Customer does not provide a plan to cure, Contractor may suspend work until such payment is made. Contractor may also suspend work under this Contract if a dispute over payment for extra work, differing site conditions, changes by Customer or other circumstances beyond Contractor's control will cause the Contractor to suffer financial hardship if Contractor is required to continue the work. Contractor may request that Customer provide written proof of Customer's ability to pay Contractor for the work remaining to be performed by Contractor at any time prior to or during performance of this Contract if the Contractor has a reasonable grounds for insecurity with respect to Customer's performance. Failure of Customer to provide such proof shall be justification for Contractor's suspension of work under this Contract.

Any suspension of work under this Contract will also suspend the progress and completion dates set forth herein.

SECTION 12. INSPECTION OF THE WORK. The Contractor shall make the work accessible during normal business hours and provide reasonable time for inspection by the Customer.

SECTION 13. SITE ACCESS AND RIGHTS OF WAY. The Customer shall provide, no later than the date when needed by the Contractor, all necessary access to the areas upon which the Work is to be performed, including convenient access to property and any other property designated in the Contract Documents for use or access by the Contractor. Customer shall continue to provide such access until completion of the Contract. Any failure to provide such access shall entitle the Contractor to an equitable adjustment in the Contract price and the Contract time.

SECTION 14. REPORTS AND SURVEYS. Contractor shall not be responsible for conditions not reasonably discoverable prior to the commencement of Contractor's work hereunder. If conditions are discovered and such conditions cause an increase in the cost of, or the time required for, performance of the work, the Contract Price and the time for completion will be equitably adjusted.

SECTION 15. PERMITS, LICENSES AND REGULATIONS. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Contractor. The Customer shall assist the Contractor in obtaining such permits and licenses.



The Customer shall assume all monetary and legal risk if the Customer desires to procure material before permits have been received from the appropriate governing authority and written direction will be required.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. If the Contractor observes that drawings, specifications or other Contract documents are at variance with such laws, ordinances, rules and regulations, the Customer shall promptly be notified and, if reasonably necessary, an adjustment made to the Contract time or Contract Price as mutually agreed to by the parties in writing.

SECTION 16. TAXES. Unless otherwise provided herein, the amount of any present or future sales or other tax, Federal, State or City, which Contractor now, or hereafter shall be required to pay, on behalf of the Customer with respect to any material covered by this Contract shall be added to the Contract Price herein to the extent supported by documentation and paid by the Customer in the same manner and with the same effect as if originally added hereto.

SECTION 17. BONDS. Any bonds required by Customer shall be furnished by the Contractor, and the cost thereof added to and become a part of this Contract and Contract Price, unless otherwise provided in Contractor's Proposal. All such additional costs require prior notice to the Customer and Customer's prior written approval.

SECTION 18. INDEMNIFICATION. To the extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") and its directors, officers, managers, employees and agents (collectively "Representatives") from and against any and all indemnity claims, whether or not involving a third-party claim, caused by, resulting from, relating to or arising out of any breach of any of the representations, warranties or covenants made in this Agreement by the Indemnitor or any of its directors, officers, employees or agents or any negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents, provided that the Indemnitor will not have any obligation to indemnify the Indemnitee or its Representatives from or against any indemnity claims to the extent caused by, resulting from, relating to or arising out of a breach of this Agreement or the negligence or willful misconduct of the Indemnitee or any of its Representatives.

SECTION 19. INSURANCE. Commercial General Liability, Automobile Liability and Workers' Compensation Insurance are carried by the Contractor, and certificates will be delivered upon request. The Contractor agrees to procure and maintain, at its own cost, general liability Insurance. Limits of liability will be maintained at \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Coverage will include Products Completed Operations and medical expense of



\$1,000,000. Contractor shall procure and maintain Workers' Compensation insurance in accordance with applicable law. Contractor shall furnish to Customer with a completed certificate of insurance coverage, and which specifically requires thirty (30) calendar days prior notice to Customer of cancellation, termination or any material change of any such insurance policy. Wrap Insurance Policies, including but not limited to Owner Controlled Insurance Programs, are expressly excluded from, and shall not be included under this Contract.

SECTION 20. LIABILITY AND CONSEQUENTIAL DAMAGES. Contractor bears the risk of accidental damage or destruction of the project prior to final completion and acceptance. It is hereby stipulated that the Contractor shall not be held responsible or liable for any loss, damage, or delay caused by fire, strikes, accident, or any other cause beyond the Contractor's control after final completion and acceptance. In no event shall either party be liable for any lost profits or consequential, indirect, incidental or punitive damages.

SECTION 21. ASSIGNMENT AND TRANSFER. Neither party shall assign or transfer this Contract without prior written consent of the other party. Assignment of Contractor's agreement shall be limited to a party that assumes all obligations of the Customer and is no less able from a financial or operational standpoint to fulfill the Customer's obligations in a timely manner.

Title to any of the material sold or installed hereunder by the Contractor shall remain in the Contractor until paid for by Customer, and in the event such materials are affixed in realty, it is expressly understood and agreed that they shall remain personal property subject to removal by the Contractor. The Contractor is responsible for claims for damage to said realty or buildings caused by the removal of said materials or any part thereof that are reasonably avoidable.

SECTION 22. TERMINATION. The Customer reserves the right to terminate the work for its convenience upon notice in writing to the Contractor. In such an event, the Contractor shall be paid its actual costs for the portion of the work performed through the date of termination, and for all of Contractor's incurred costs of termination, including demobilizations and any termination charges by vendors and subcontractors, plus 20% of all of Contractor's actual and incurred costs for overhead and profit. Contractor shall make every reasonable effort to contain costs associated with any termination.

SECTION 23. DISPUTE RESOLUTION. In the event of any dispute, controversy or claim arising out of or relating to this Contract or its alleged breach, which cannot be resolved by mutual agreement through direct discussion, shall be settled by mediation with a neutral third-party mediator acceptable to both parties before recourse to any form of binding resolution. The cost of any legal proceedings shall be shared equally by the parties participating.



SECTION 24. WARRANTY. Contractor shall provide a workmanship warranty for one (1) year from the date of Contractor's substantial completion of the Work or as otherwise provided by applicable law, whichever is greater. Contractor's warranty period shall not be extended by corrective work performed by Contractor. Contractor will pass through all individual supplier warranties with specific details on the coverage. Manufacturer warranties shall be provided upon completion of the work to the Customer.

SECTION 25. ACCEPTANCE AND AUTORIZATION. The Contractor and Customer, by accepting this contract, agree to all of the conditions and terms specified herein.

SECTION 26. SPECIAL PROVISIONS.

Addendum to construction contract, M Bar C's Proposal, Rate sheet, and Schedule of Values are attached hereto and made a part hereof.

Notice:

Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING – IF THE TOTAL PRICE OF THE JOB IS \$500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE



M^{BARC} CONSTRUCTION™

THE STRENGTH BETWEEN SUN AND SHADE™

CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321 CSLB FOR MORE INFORMATION.



M^{BAR}C CONSTRUCTION™

THE STRENGTH BETWEEN SUN AND SHADE™

CUSTOMER:

("Company Name")

Date: _____

Signature

Print Name

Title

CONTRACTOR:

M Bar C Construction, Inc.

Date: _____

Signature

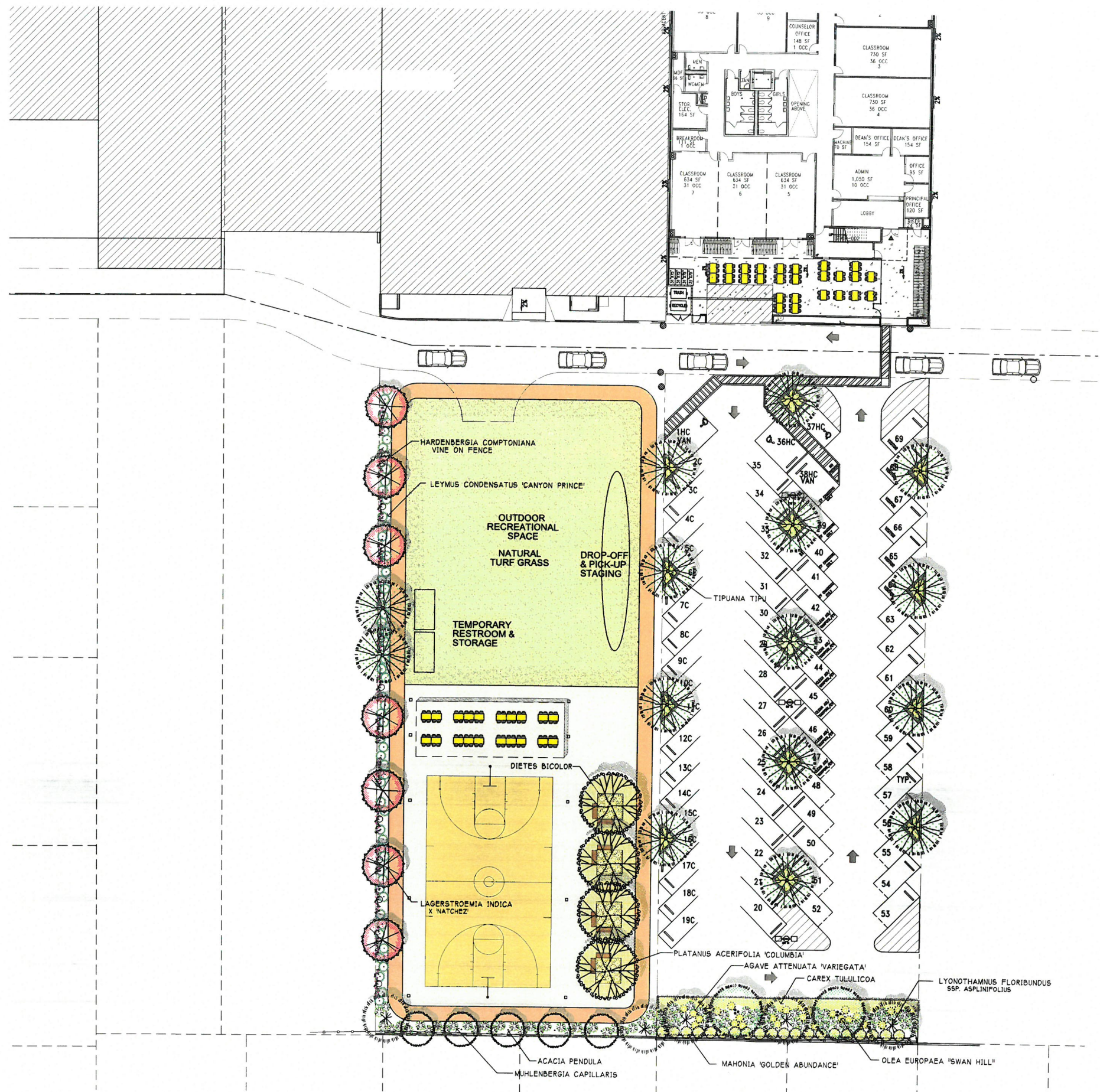
Print Name

Title





Exhibit B

Site Improvement Site Plan







PLANT MATERIAL LEGEND




TREES

-  PLATANUS ACERIFOLIA 'COLUMBIA'
LONDON PLANE TREE
-  TIPUANA TIPU
TIPU TREE




SMALL TREES / LARGE SHRUBS

-  ACACIA PENDULA
WEeping ACACIA
-  OLEA EUROPAEA "SWAN HILL"
FRUITLESS OLIVE
-  LAGERSTROEMIA INDICA
X 'NATCHEZ'
-  LYONOTHAMNUS FLORIBUNDUS
SSP. ASPLINIFOLIUS
SANTA CRUZ IRONWOOD

**LOW WATER USE GRASSES
AND GRASS-LIKE PLANTS**

-  LEYMUS CONDENSATUS 'CANYON PRINCE'
WILD RYE
-  MUHLENBERGIA CAPILLARIS
PINK MUHLY
-  CAREX TULINICOA
BERKELEY SEDGE

**LOW WATER SHRUBS AND
PERENNIALS**

-  AGAVE ATTENUATA 'VARIEGATA'
FOXTAIL AGAVE
-  DIETES BICOLOR
AFRICAN LILY
-  MAHONIA 'GOLDEN ABUNDANCE'
GOLDEN ABUNDANCE MAHONIA


LOW WATER USE VINES

-  HARDENBERGIA COMPTONIANA
LILAC VINE

ALL PROPOSED PLANTING IS CLASSIFIED LOW WATER USE
AND NON-INVASIVE BY STATE OF CALIFORNIA
PUBLISHED REFERENCES

**Received by Planning
June 26, 2019**

**EXHIBIT A
APCSV-2019-1064-ZC-CDO
Page 7 of 7**

 **LANDSCAPE MASTER PLAN
SCALE: 1/16"=1'-0"**

ORIGINAL

FRANCO ARCHITECTS INC.
12345 Venture Blvd. H
Shubot City, CA 91904
Architects and Planners
Tel: 619 754-0200
Fax: 619 754-0208

Consultant
CARTER ROMANEK
Landscape Architects, Inc.
28720 Rossmore Dr., Suite 100
San Jose, California 95131
(415) 477-3860

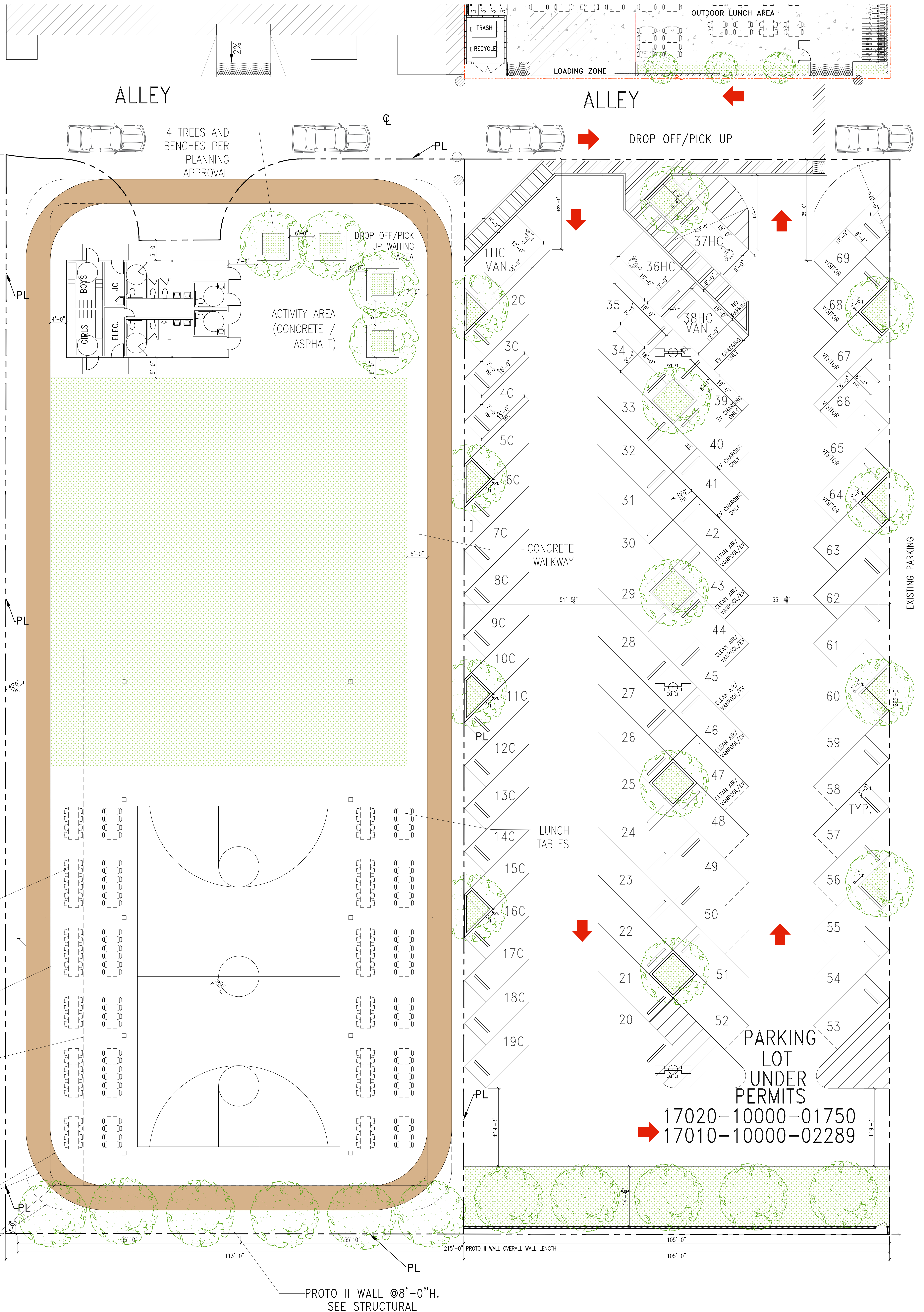
MAGNOLIA SCIENCE ACADEMY (PARKING)
18220 & 18238 SHERMAN WAY, RESEDA, CA 91335

REV	DESCRIPTION	DATE



PROJECT	MAGNOLIA SCIENCE ACADEMY
PROJECT ADDRESS	18220 & 18238 SHERMAN WAY RESEDA, CA 91335
DATE	5/20/2019
SCALE	AS NOTED

revised



SCOPE OF WORK

- OPTIONAL BLEACHERS/SPECTATOR CHAIRS LOCATION
- PROPOSED SHADE STRUCTURE
- SHADE STRUCTURE PER PLANNING APPROVAL
- PROPOSED TRACK RADIUS
- TRACK RADIUS PER PLANNING APPROVAL

17020-10000-01750
 17010-10000-02289



Exhibit C

RFP



MAGNOLIA PUBLIC SCHOOLS

Request for Qualifications/Proposals
to Provide a Solar Shade Structure
for Magnolia Science Academy 1 | Reseda

Due Date:

May 7, 2021

1.0 INTRODUCTION

Magnolia Education & Research Foundation doing-business as Magnolia Public Schools ("**MPS**"), a charter school management organization, operates Magnolia Science Academy 1 ("**MSA-1**") located at 18220 Sherman Way and 18238 Sherman Way in the Reseda neighborhood of Los Angeles. The former houses MSA-1's high school and the latter houses MSA-1's middle school. The purpose of this RFP is to solicit bids to design and build a solar shade structure (the "**Project**") in the existing surface parking lot belonging to the middle school (the "**Project Site**"). The Project is part of a larger site improvement plan for the middle school parking lot wherein recreation and open space will be developed (the "**Site Improvement Plan**"). The location of the Project Site is shown on Exhibit A. The overall Site Improvement Plan is shown on Exhibit B.

Franco Architects is the architect of record for the Site Improvement Plan. The successful respondent will be required to coordinate their efforts with them and the rest of the design team.

Site Tour

A site tour will be facilitated if requested.

Proposals Due

Responses to the RFP are due no later than **5:00 PM (PST), Friday, May 7, 2021**, to the following individual:

Patrick Ontiveros
Director of Facilities
Magnolia Public Schools
250 East 1st Street
Suite 1500
Los Angeles, CA 90012
pontiveros@magnoliapublicschools.org
(213) 628-3634 x 103

Questions regarding this RFP may be directed to the individual identified above via email.

Proposal Format:

One (1) electronic PDF copy (by email) of your proposal must be delivered to the person indicated by the deadline stated above and one (1) hard copy must be delivered to the above address no later than two (2) business days thereafter. Please endeavor to keep any emailed material to a single manageable file size (at or about 10 MBs) so that it may be easily distributed to the Selection Committee.

Respondents are encouraged to only include information pertinent to the Project and the Selection Committee's ability to select the vendor best suited to successfully complete this job.

Interviews:

Interviews will be held at the discretion of MPS and MSA-1. Interviews, if any, are expected to be held during the week of May 10th. Location and time are to be determined.

If interviews are held, respondents will meet with the Selection Committee for approximately ½ hour to 1 hour. The interview will be an open, unscripted format. Respondents will have 20 minutes to present any information they feel is pertinent followed by questions and answers and general discussion.

Selection Committee:

The Selection Committee will be composed of representatives from MPS and MSA-1, and the Architect.

1.1 Timeline

RFP Distributed:	April 22, 2021
Proposals Due:	May 7, 2021
Interviews, if any (exact date and time TBD):	May 10, 11 or 12, 2021
Selection Announced:	May 13, 2021
Contract Execution:	Week of May 17, 2021

2.0 PROJECT DESCRIPTION

The Project is the design and construction of a solar shade structure that will cover a basketball court and outdoor eating facilities which will also be constructed. The Site Improvement Plan, including the Project, was part of a zone change application that was approved the City of Los Angeles. Conditions of the zone change approval are contained in Exhibit C attached hereto. Respondent is responsible for reviewing the conditions of approval to insure their Project proposal meets the therein stated requirements. The Project will be 25 feet high and will be 80 feet wide by 125 feet long and will have solar panels on the top. Exhibit B is a depiction of the Site Improvement Plan, including the Project.

A soils report for the immediately adjacent surface parking lot parcel is attached as Exhibit D.

3.0 PROPOSAL FORMAT

Respondent shall format its response as set forth below to facilitate timely review and selection. Please be specific to the RFP, and do not include materials not explicitly requested, such as generic marketing materials.

Your response should include the following:

- Letter of interest
- Name of your company and the individual responsible for the account
- Restate all the requirements of Section 4.0 and provide responses to each

See Section 1.0 for additional proposal format clarifications.

4.0 PROPOSAL REQUIREMENTS**4.1 Vendor Qualifications and Experience****4.1.1 Vendor Description.**

Provide a description of your company and why it is qualified to undertake the Project.

Provide the following:

A minimum of three (3) references, including

- (a) name and scope of the project
- (b) client name and contact information
- (c) contract amount

4.1.2 Qualifications and Experience of Key Personnel.

Identify the person(s) that will be principally responsible for working with the MPS and leading this engagement and their qualifications and experience

4.1.3 Insurance.

Provide a description of vendor's insurance coverage.

4.2 Cost

Respondent's proposal should include an overall not to exceed cost and should be broken down in detail. The proposal should also provide a break-down of any and all other costs and fees including, but not limited to, labor, delivery fees, installation fees, applicable taxes, etc.

4.3 Product Information

Respondent will confirm its ability to provide the Project as described above in Section 2.2. Where a respondent believes there are multiple options for the Project, the respondent may provide such alternatives explaining the difference in each alternative and describing the cost differences.

4.4 Warranty Information

Provide a description of the warranty provided for the Project.

4.5 Schedule

MPS and MSA-1 desire to complete construction of the Project and the Site Improvement Plan in time for the 2022-23 school year. Respondents shall provide an affirmative statement of its ability to collaborate with the Architect to submit plans to the Los Angeles Department of Building and Safety ("LADBS") in order to meet the desired delivery date. Respondent shall also provide an affirmative statement describing the construction duration for the Project upon receipt of permits.

Owner and architect believe that the plans for the Project should be ready for submission to LADBS by July 9, 2021 in order to meet the timeline of completing construction by the start of the 2022-23 school year on or about August deadline.

4.6 Contract

The successful respondent will be required to sign an agreement with Owner substantially similar to Exhibit E attach hereto. Please provide an affirmative statement of respondent's concurrence or else any changes that respondent desires to make to the form agreement.

5.0 CONTACT

Questions to Owner will be accepted via email by the Director of Facilities identified above. Answers to questions will be provided to all participants as available.

6.0 RFP/Q EXHIBITS

Exhibit A: Project Site Location

Exhibit B: Project

Exhibit C: Letter of Determination

Exhibit D: Soils Report

Exhibit E: Form of Contract -- AIA A141-2014 Standard Form of Agreement between Owner and Design-Builder

7.0 BID ACCEPTANCE/REJECTION

The Owner reserves the right to reject any or all proposals, or cancel the solicitation process at its sole discretion.

8.0 PROPOSAL VALIDITY

RFP responses shall be valid until execution of a contract, which is expected to occur on or about May 2021. No changes to information received within the Respondent's proposal shall be changed or altered without approval by the Owner.

Exhibit B

Site Improvement Plan

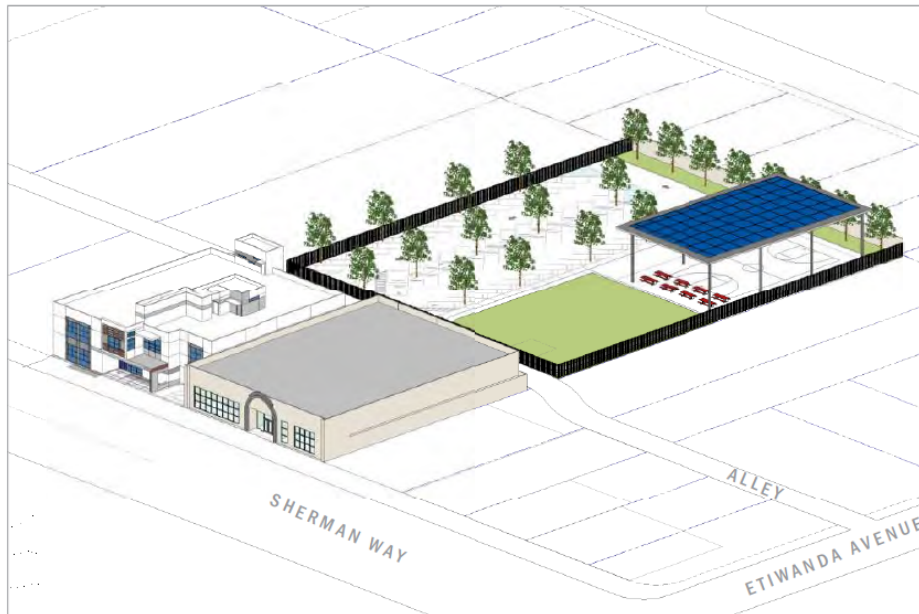
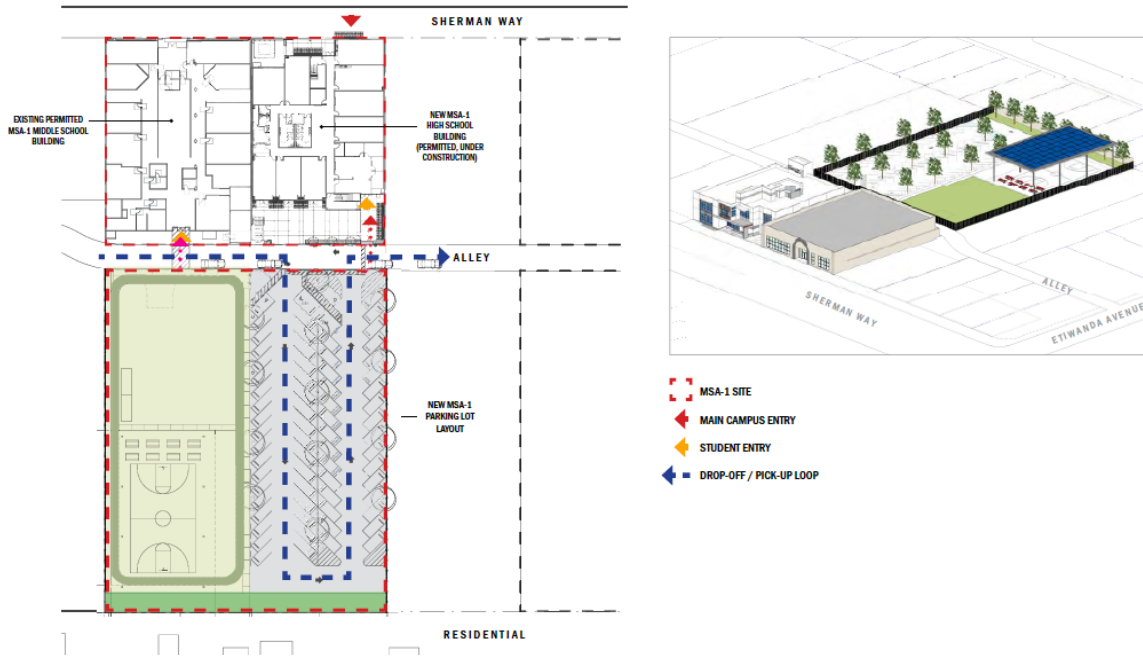


Exhibit C

Letter of Determination / Conditions of Approval



SOUTH VALLEY AREA PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300

www.planning.lacity.org

*CORRECTED LETTER OF DETERMINATION

MAILING DATE: APR 28 2020

Case No. **APCSV-2019-1064-ZC-CDO**
CEQA: ENV-2019-1065-MND
Plan Area: Reseda – West Van Nuys

Council District: 3 - Blumenfield

Project Site: 18216 – 18238 West Sherman Way

Applicant: Magnolia Science Academy 1
Representative: Veronica Becerra, Rabuild Commercial Services LLC

At its meeting of **November 14, 2019**, the South Valley Area Planning Commission took the actions below in conjunction with the approval of the following Project:

An outdoor facilities improvement to the Magnolia Science Academy 1 campus. The Project involves the grading of an existing surface parking lot and the construction, use, and maintenance of an open recreation area with a landscaped grass field, a modular restroom and storage facility, and an outdoor covered student activity area with a solar shade structure 25 feet in height. A portion of the parking lot will be re-striped and maintained as a surface parking lot with the addition of landscaping and trees. The Project also includes installation of an eight foot tall concrete masonry unit block wall along the southern property line and a six foot tall security fence along the east and west property lines. The proposed project will not increase the student enrollment capacity of the school.

1. **Found**, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the Mitigated Negative Declaration, No. ENV-2019-1065-MND (“Mitigated Negative Declaration”), and all comments received, with the imposition of the mitigation measures, there is no substantial evidence that the project will have a significant effect on the environment; **Found** the Mitigated Negative Declaration reflects the independent judgment and analysis of the City; **Found** the mitigation measures have been made enforceable conditions on the project; and **Adopt** the Mitigated Negative Declaration and the Mitigation Monitoring Program prepared for the Mitigated Negative Declaration;
2. **Approved and recommended** that the City Council adopt, pursuant to Section 12.32 F of the Los Angeles Municipal Code (LAMC), a Zone change from [Q]P-1L-CDO to (T)[Q]C2-1L-CDO to permit the construction and installation of outdoor recreational facilities, a modular restroom a solar shade structure, and landscaping;
3. **Approved**, ^{*1}pursuant to LAMC Section 13.08 E.3 and the Reseda Central Business District Community Design Overlay, a Design Overlay Plan Approval for the construction,

¹ The above-referenced technical correction is not discretionary, therefore, issuance of this corrected letter of determination does not extend or require a new appeal period.

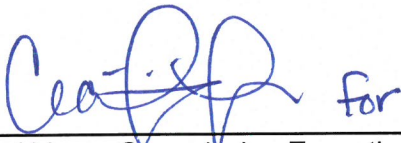
installation, use, and maintenance of a proposed shade structure, modular bathroom, landscaping, and surface parking areas.

4. **Adopted** the Conditions of Approval; and
5. **Adopted** the Findings.

This action was taken by the following vote:

Moved: Bishop
Seconded: Beatty
Ayes: Mather, Menedjian
Absent: Dierking

Vote: 4 – 0



Rafael Vega, Commission Executive Assistant

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Zone Change Ordinance, Map, Findings

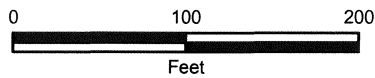
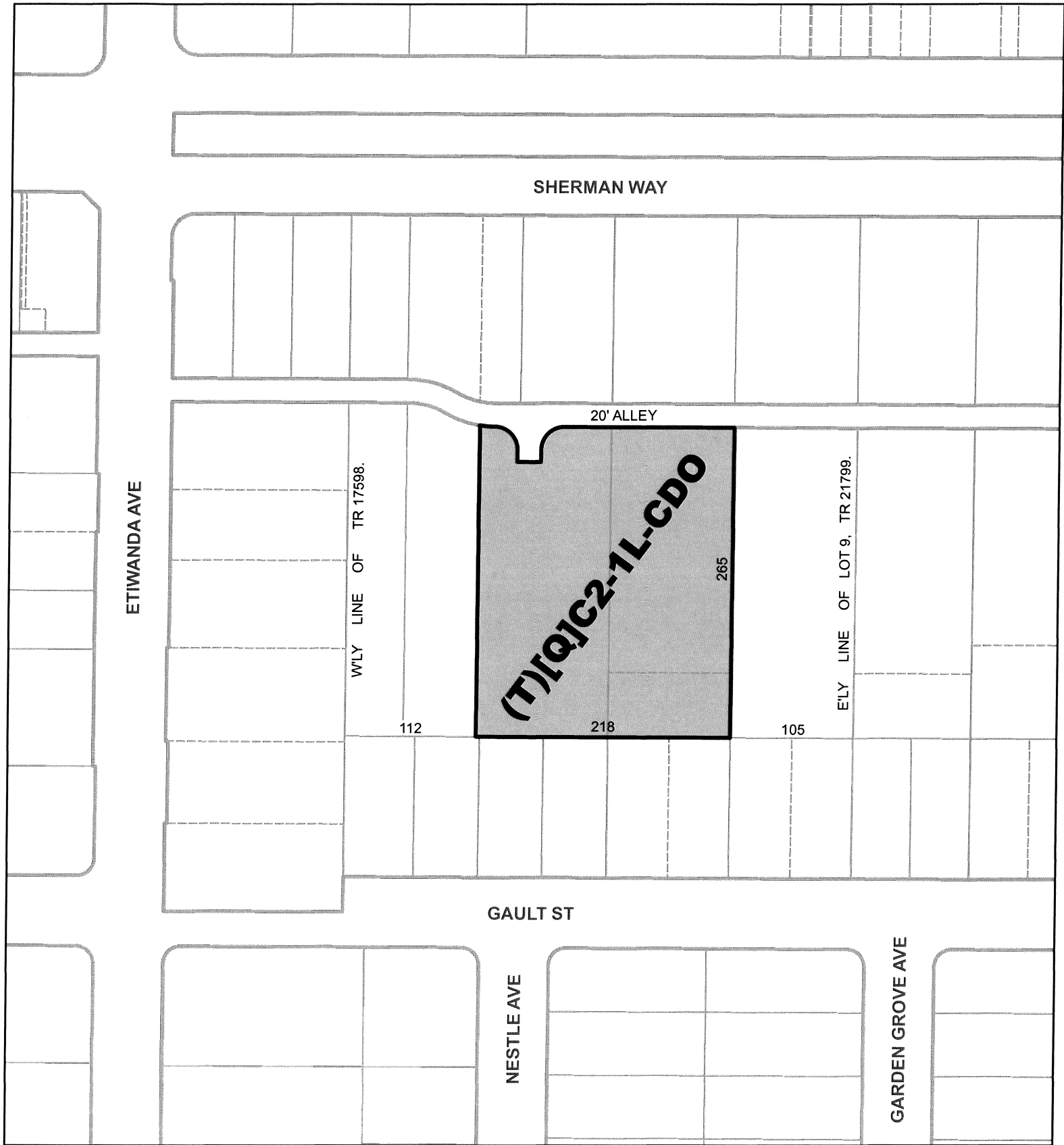
c: JoJo Pewsawang, City Planner
Renata Ooms, City Planning Associate

ORDINANCE NO. _____

An ordinance amending Section 12.04 of the Los Angeles Municipal Code by amending the Zoning map.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 12.04 of the Los Angeles Municipal Code is hereby amended by changing the zone and zone boundaries shown upon a portion of the zone map attached thereto and made a part of Article 2, Chapter 1 of the Los Angeles Municipal Code, so that such portion of the zoning map shall be as follows:

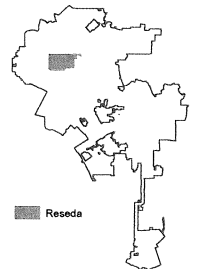


APCSV-2019-1064-ZC-CDO

AAV/af

111319

City of Los Angeles



[Q] QUALIFIED CLASSIFICATIONS

The subject property shall continue to be subject to the Reseda Central Business District Community Design Overly Permanent [Q] Conditions imposed by Ordinance No. 176558 and adopted on March 1, 2005.

CONDITIONS FOR EFFECTUATING (T) TENTATIVE CLASSIFICATION REMOVAL

Pursuant to Section 12.32-G of the Municipal Code, the (T) Tentative Classification shall be removed by posting of guarantees through the B-permit process of the City Engineer to secure the following without expense to the City of Los Angeles, with copies of any approval or guarantees provided to the Department of City Planning for attachment to the subject planning case file.

Dedication(s) and Improvement(s). Prior to the issuance of any building permits, the following public improvements and dedications for streets and other rights of way adjoining the subject property shall be guaranteed to the satisfaction of the Bureau of Engineering, Department of Transportation, Fire Department (and other responsible City, regional and federal government agencies, as may be necessary):

Responsibilities/Guarantees.

1. As part of early consultation, plan review, and/or project permit review, the applicant/developer shall contact the responsible agencies to ensure that any necessary dedications and improvements are specifically acknowledged by the applicant/developer.
2. **Bureau of Engineering.** Prior to issuance of sign offs for final site plan approval and/or project permits by the Department of City Planning, the applicant/developer shall provide written verification to the Department of City Planning from the responsible agency acknowledging the agency's consultation with the applicant/developer. The required dedications and improvements may necessitate redesign of the project. Any changes to project design required by a public agency shall be documented in writing and submitted for review by the Department of City Planning.
 - a. Dedication Required: None
 - b. Improvements Required:
 - i. **Sherman Way** – Construct a new full-width concrete sidewalk. Remove and replace bad order concrete curb and gutter along the property frontage.
 - ii. **Alley** – Reconstruct the 20-foot wide alley and longitudinal concrete gutter as necessary to provide safe access for students and pedestrian traffic. (Note: The site plan does not show the existing public right-of-way for the Alley turning area. This public right-of-way must be shown on all plans.)

Notes:

Broken curb and/or gutter includes segments within existing score lines that are depressed or upraised by more than ¼ inch from the surrounding concrete work or are separated from the main body of the concrete piece by a crack through the entire vertical segment and greater than 1/8 inch at the surface of the section.

Non-ADA compliant sidewalk shall include any sidewalk that has a cross slope that exceeds 2% and/or is depressed or upraised by more than ¼ inch from the surrounding concrete work or has full concrete depth cracks that have separations greater than 1/8

inch at the surface. The sidewalk also includes that portion of the pedestrian path of travel across a driveway.

All new sidewalk curb and gutter shall conform to the Bureau of Engineering Standard Plans S410-2, S410-4, S442-5 and S444-0.

Install tree wells with root barriers and plant street trees satisfactory to the City Engineer and the Urban Forestry Division of the Bureau of Street Services. The applicant should contact the Urban Forestry Division for further information (213) 847-3077.

Street lighting may be required satisfactory to the Bureau of Street Lighting (213) 847-1551.

Department of Transportation may have additional requirements for dedication and improvements.

Regarding any conflicts with power pole matters, contact the Department of Water and Power at (213) 367-2715.

- c. Provide proper site and street drainages for all streets being improved.
- d. Mainline sewer exists in Sherman Way and in the Alley. All Sewerage Facilities Charges and Bonded Sewer Fees are to be paid prior to obtaining a building permit.
- e. Submit a parking area and driveway plan to the Valley District Office of the Bureau of Engineering and the Department of Transportation for review and approval.

3. Department of Transportation.

- a. Access to Sherman Way shall be prohibited. Access to the project site is proposed via the alley.
- b. A driveway apron width of $W=30$ feet is required for any non-alley access.
- c. A minimum of 20-foot reservoir space is required between any security gate or parking stall and the property line for any non-alley access, to the satisfaction of the Department of Transportation.
- d. A parking area and driveway plan should be submitted to the Citywide Planning Coordination Section of the Department of Transportation for approval prior to submittal of building permit plans for plan check by the Department of Building and Safety. Transportation approvals are conducted at 6262 Van Nuys Blvd., Room 320, Van Nuys, CA 91401.
- e. That permitting fees be paid to the Department of Transportation as required per Ordinance No. 183270 and LAMC Section 19.15 prior to any building permit approval. Note: the applicant may be required to comply with any other applicable fees per this new ordinance.

4. Bureau of Street Lighting

- a. IMPROVEMENT CONDITION: No street lighting improvements if no street widening per BOE improvement conditions. Otherwise relocate and upgrade street lights; two (2) on Sherman Way.

Notes:

The quantity of street lights identified may be modified slightly during the plan check process based on illumination calculations and equipment selection.

Conditions set: 1) in compliance with a Specific Plan, 2) by LADOT, or 3) by other legal instrument excluding the Bureau of Engineering conditions, requiring an improvement that will change the geometrics of the public roadway or driveway apron may require additional or the reconstruction of street lighting improvements as part of that condition.

5. Urban Forestry Division.

- a. Plant street trees and remove any existing trees within dedicated streets or proposed dedicated streets as required by the Urban Forestry Division of the Bureau of Street Services. Parkway tree removals shall be replanted at a 2:1 ratio. All street tree plantings shall be brought up to current standards. When the City has previously been paid for tree plantings, the sub divider or contractor shall notify the Urban Forestry Division (213-847-3077) upon completion of construction to expedite tree planting.

Note: Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: (213) 847-3077 for permit information. CEQA document must address parkway tree removal.

6. Fire Department.

- a. Access for Fire Department apparatus and personnel to and into all structures shall be required.
- b. One or more Knox Boxes will be required to be installed for LAFD access to project. Location and number to be determined by LAFD Field Inspector. (Refer to FPB Requirement No. 75).
- c. 505.1 Address identification. New and existing buildings shall have approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property.
- d. No building or portion of a building shall be constructed more than 150 feet from the edge of a roadway of an improved street, access road, or designated fire lane.
- e. Fire lane width shall not be less than 20 feet. When a fire lane must accommodate the operation of Fire Department aerial ladder apparatus or where fire hydrants are installed, those portions shall not be less than 28 feet in width.
- f. The width of private roadways for general access use and fire lanes shall not be less than 20 feet, and the fire lane must be clear to the sky.
- g. Fire lanes, where required and dead ending streets shall terminate in a cul-de-sac or other approved turning area. No dead ending street or fire lane shall be greater than 700 feet in length or secondary access shall be required.
- h. Submit plot plans indicating access road and turning area for Fire Department approval.

- i. Adequate off-site public and on-site private fire hydrants may be required. Their number and location to be determined after the Fire Department's review of the plot plan.
- j. All parking restrictions for fire lanes shall be posted and/or painted prior to any Temporary Certificate of Occupancy being issued.
- k. Plans showing areas to be posted and/or painted, "FIRE LANE NO PARKING" shall be submitted and approved by the Fire Department prior to building permit application sign-off.
- l. Electric Gates approved by the Fire Department shall be tested by the Fire Department prior to Building and Safety granting a Certificate of Occupancy.
- m. That in order to provide assurance that the proposed common fire lane and fire protection facilities, for the project, not maintained by the City, are properly and adequately maintained, the sub-divider shall record with the County Recorder, prior to the recordation of the final map, a covenant and agreement (Planning Department General Form CP-6770) to assure the following:
 - i. The establishment of a property owners association, which shall cause a yearly inspection to be, made by a registered civil engineer of all common fire lanes and fire protection facilities. The association will undertake any necessary maintenance and corrective measures. Each future property owner shall automatically become a member of the association or organization required above and is automatically subject to a proportionate share of the cost.
 - ii. The future owners of affected lots with common fire lanes and fire protection facilities shall be informed of their responsibility for the maintenance of the devices on their lots. The future owner and all successors will be presented with a copy of the maintenance program for their lot. Any amendment or modification that would defeat the obligation of said association as the Advisory Agency must approve required hereinabove in writing after consultation with the Fire Department.
 - iii. In the event that the property owners association fails to maintain the common property and easements as required by the CC and R's, the individual property owners shall be responsible for their proportional share of the maintenance.
 - iv. Prior to any building permits being issued, the applicant shall improve, to the satisfaction of the Fire Department, all common fire lanes and install all private fire hydrants to be required.
 - v. That the Common Fire Lanes and Fire Protection facilities be shown on the Final Map.
 - vi. The plot plans shall be approved by the Fire Department showing fire hydrants and access for each phase of the project prior to the recording of the final map for that phase. Each phase shall comply independently with code requirements.

Note: The applicant is further advised that all subsequent contact regarding these conditions must be with the Hydrant and Access Unit. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished by appointment only, in order to assure that you receive service with a minimum amount of waiting please call **(818) 374-4351**. You should advise any consultant representing you of this requirement as well.

CONDITIONS OF APPROVAL

Pursuant to Section 13.08 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

1. **Development.** The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A" except as may be revised as a result of this action.
2. **Height.** The height of the solar shade structure shall not exceed 25 feet.
3. **Setbacks.** A 15 foot setback along the southern property line shall be maintained with landscaping and trees.
4. **Landscape Plan.** Landscaping shall be provided in substantial compliance with the submitted Landscape Plan (as seen in Exhibit A). Landscaped areas shall be planted with a variety of plant materials which include shrubs, trees and ground cover, and all plants and trees shall be drought-resistant. Artificial plants are prohibited. All landscaped areas shall be equipped with an automatic sprinkler or drip irrigation system designed to conserve water.
5. **Mechanical Equipment.** All mechanical equipment on the roof shall be screened from view. The transformer, if visible from the ally or adjoining properties, shall be screened with landscaping.
6. **Lighting.** Lighting shall be installed in the parking lot and within the covered and uncovered recreation areas. Outdoor lighting shall be designed and installed with shielding, such that the light source cannot be seen from adjacent residential properties or the public right-of-way, nor from above.
7. **Building Materials.** A gray and blue color scheme as proposed in Exhibit "A" shall be used. No florescent colors shall be used.
8. **Fence and Wall Materials.**
 - a. The fence along the east and west property lines shall be combination wrought iron and masonry wall. Chain link fencing is prohibited.
 - b. Any masonry walls along any property line should be constructed from decorative brick, stone, split face concrete block, or other decorative material. Masonry block walls should be finished with a masonry cap.
 - c. The use of barbed wire, razor wire, and concertina wire is prohibited.
9. **Maintenance.** The subject property (including all trash storage areas, parking facilities, sidewalks, yard areas, parkways, and exterior walls and fences along the property lines) shall be maintained in an attractive condition and shall be kept free of trash and debris.
10. **Solar Panels.** Solar panels shall be installed on the rooftop of the shade structure to be connected to the school building's electrical system. The entirety of the roof area shall be reserved for the installation of a solar photovoltaic system, to be installed prior to the issuance of a certificate of occupancy, in substantial conformance with the plans stamped "Exhibit A".

Administrative Conditions of Approval

11. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review or approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning for placement in the subject file.
12. **Code Compliance.** Area, height and use regulations of the (T)(Q)RD3-1 Zone classification of the subject property shall be complied with, except where herein conditions are more restrictive.
13. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.
14. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public officials, legislation or their successors, designees or amendment to any legislation.
15. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.
16. **Building Plans.** Page 1 of the grants and all the conditions of approval shall be printed on the building plans submitted to the Department of City Planning and the Department of Building and Safety.
17. **Corrective Conditions.** The authorized use shall be conducted at all time with due regards to the character of the surrounding district, and the right is reserved to the North Valley Area Planning Commission, or the Director pursuant to Section 12.27.1 of the Municipal Code to impose additional corrective conditions, if in the Commission's or Director's opinion such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
18. **Expediting Processing Section.** Prior to the clearance of any conditions, the applicant shall show that all fees have been paid to the Department of City Planning Expedited Processing Section.
19. **Indemnification and Reimbursement of Litigation Costs.**

Applicant shall do all of the following:

- a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions or to claim personal property damage, including from inverse condemnation or any other constitutional claim.

- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement (b).
- e. If the City determines it necessary to protect the City's interests, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commission, committees, employees and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

FINDINGS

General Plan/Charter Findings

1. General Plan Land Use Designation.

General Plan Land Use Designation. The subject property is located within the Reseda – West Van Nuys Community Plan area which was updated by the City Council on November 17, 1999 and designates the subject property for Community Commercial land uses corresponding to the CR, C2, C4, RAS3, RAS4, P and PB Zones. The site is zoned with the [Q]P-1L-CDO Zone. The proposed C2 zone is a corresponding zone for the Community Commercial land use designation. The proposed outdoor recreation facilities, bathroom with storage area, and solar shade structure is consistent with development permitted in the proposed (T)[Q]C2-1L-CDO Zone and is consistent with the regulations of the qualified Q condition. Therefore, the project is in substantial conformance with the purposes, intent and provisions of the General Plan as reflected in the adopted Framework Element and Community Plan.

2. General Plan Text

- a. The **Framework Element** of the General Plan (Framework Element) was adopted by the City of Los Angeles in December 1996 and re-adopted in August 2001. The Framework Element provides guidance regarding policy issues for the entire City of Los Angeles, including the project site. The Framework Element also sets forth a Citywide comprehensive long-range growth strategy and defines Citywide policies regarding such issues as land use, housing, urban form, neighborhood design, open space, economic development, transportation, infrastructure, and public services.

The Framework Element Long Range Land Use Diagram for the San Fernando Valley identifies Sherman Way in Reseda as a “Community Center.” Community Centers are a focal point for surrounding residential neighborhoods and contain a diversity of uses such as small offices and overnight accommodations, cultural and entertainment facilities, and schools and libraries, in addition to neighborhood oriented services. The proposed Zone Change to a C2 zone is consistent with a “Community Center” and the proposed school recreation facilities are consistent with the long range vision for the area.

The Framework Element includes the following Goals, Objectives and Policies relevant to the request:

GOAL 9N: Public schools that provide a quality education for all of the City's children, including those with special needs, and adequate school facilities to serve every neighborhood in the City so that students have an opportunity to attend school in their neighborhoods.

Objective 9.32 Work constructively with LAUSD to promote the siting and construction of adequate school facilities phased with growth.

Policy 9.32.2: Explore creative alternatives for providing new school sites in the City, where appropriate.

The proposed Zone Change from [Q]P-1L-CDO to (T)[Q]C2-1L-CDO will allow for the development of a recreational facility where an underutilized surface parking is currently located. The project is in conjunction with Magnolia Science Academy 1, an LAUSD

Charter School, which has been conducting student lunch, student recreation and drop-off/pick-up activities incidental to the school, in the surface parking lot through Zone Variances since 2006 (ZA-2005-3787-ZV, ZA-2008-0748-ZV, ZA-2014-0995-ZV). The Zone Change is consistent with Framework Policy 9.32.2 as it would allow an underutilized site to be developed into a permanent school facility.

Therefore, the Zone Change is consistent with the Distribution of Land Use goals, objectives and policies of the General Plan Framework Element.

- b. **Reseda – West Van Nuys Community Plan.** The Community Plan text includes the following relevant land use Objectives and Policies:

GOAL 4: PUBLIC SCHOOLS THAT PROVIDE A QUALITY EDUCATION FOR ALL OF THE CITY'S CHILDREN, INCLUDING THOSE WITH SPECIAL NEEDS, AND ADEQUATE SCHOOL FACILITIES TO SERVE EVERY NEIGHBORHOOD IN THE CITY.

Objective 4-1: Work constructively with LAUSD to promote the siting and construction of adequate school facilities phased with growth.

Policy 4-1.1: Explore creative alternatives for providing new school sites in the City, where appropriate.

The proposed Zone Change from [Q]P-1L-CDO to (T)[Q]C2-1L-CDO will allow for the redevelopment of an underutilized surface parking lot with proposed recreational facilities in conjunction with the Magnolia Science Academy 1, an LAUSD Charter School. The school has been conducting student lunch, student recreation and drop-off/pick-up activities incidental to the school, in the surface parking lot through Zone Variances since 2006 (ZA-2005-3787-ZV, ZA-2008-0748-ZV, ZA-2014-0995-ZV). The Zone Change would allow for the installation of landscaping and a natural turf lawn and the construction of a permanent structure for active recreation and a lunch area. Therefore the Zone Change is consistent with Framework Policy 9.32.2 as it would allow an underutilized site to be developed into a permanent school facility.

- c. The **Mobility Element** of the General Plan (Mobility Plan 2035) is not likely to be affected by the recommended action herein. The site abuts an alley to the north. The alley is dedicated to a width of 20 feet and improved with asphalt roadway. As part of the (T) Tentative Classification conditions incorporated herein, the applicant must reconstruct the 20-foot wide alley and longitudinal concrete gutter as necessary to provide safe access for students and pedestrian traffic. The site does not abut any other public right-of-way.
- d. The **Sewerage Facilities Element** of the General Plan will not be affected by the recommended action. While the sewer system might be able to accommodate the total flows for the proposed project, further detailed gauging and evaluation may be needed as part of the permit process to identify a specific sewer connection point. If the public sewer has insufficient capacity then the developer will be required to build sewer lines to a point in the sewer system with sufficient capacity. A final approval for sewer capacity and connection permit will be made at that time. Ultimately, this sewage flow will be conveyed to the Hyperion Treatment Plant, which has sufficient capacity for the project.

Zone Change and “T”/“Q” Classification Findings

3. Pursuant to Section 12.32 of the Municipal Code, the zone change and classifications are necessary because:

- a. **Public Necessity:** On April 29, 2019, Mayor Eric Garcetti released LA’s Green New Deal (Sustainable City pLAn), a roadmap to achieve short-term results while setting the path to strengthen the transformation of the City in the decades to come. As part of the plan, the Mayor set forth a goals to supply 100% renewable energy by 2045 and increase tree canopy in areas of greatest need by at least 50% by 2028 to grow a more equitable urban forest that provides cooling, public health, habitat, energy savings, and other benefits. The Zone Change would allow an asphalt surface parking lot site to be redeveloped into an outdoor recreation facility with a solar shade structure and many new trees. By providing solar panels and increasing the tree canopy coverage on site, the project is aligned with the city’s sustainability goals and is consistent with public necessity.
- b. **Convenience:** The project site is located in the Reseda Central Business District, an area that is highly urbanized with commercial uses, residential uses, and transportation infrastructure. The proposed project would improve the outdoor recreational facilities of an existing school. Granting the Zone Change to the C2 Zone would allow residents local access to an LAUSD Charter School that offers high quality, on-site, outdoor recreational facilities for its students. Improving the school’s facilities provides a public convenience allowing residents the option to send their children to an amenity rich school nearby.
- c. **General Welfare:** Granting the Zone Change to the C2 Zone would allow the redevelopment of an underutilized surface parking lot with improved outdoor recreational areas in conjunction with an existing school. Pursuant to three previously granted Zone Variances, the school already programs a portion of the P-zoned surface parking lot as a recreation area and lunch area for students. The Zone Change to the C2 Zone would allow the school to continue the existing use while also upgrading the outdoor school facilities with a solar shade structure, a natural turf grass field, landscaping, and trees. Students at the school would benefit from the improved facilities, additional greenery, and shade.
- d. **Good Zoning Practice:** The proposed C2 Zone is identified as a corresponding zone of the Community Commercial land use designation. The development would be consistent with the land use designation. The proposed Zone Change from [Q]P-1L-CDO to (T)[Q]C2-1L-CDO will allow for the development of an underutilized surface parking lot with recreational facilities for an LAUSD Charter School, which has been conducting student lunch, student recreation and drop-off/pick-up actives in the surface parking lot through Zone Variances since 2006 (ZA-2005-3787-ZV, ZA-2008-0748-ZV, ZA-2014-0995-ZV). As such, the C2-Zone would allow site’s facilities to be upgraded while continuing a long standing authorized use of the site without the need for future Zone Variances.
- e. **“T” and “Q” Classification Findings:** Per Section 12.32-G,1 and 2 of the Municipal Code, the current action, as recommended, has been made contingent upon compliance with new “T” and “Q” conditions of approval. Such limitations are necessary to ensure the identified dedications, improvements, and actions are undertaken to meet the public’s needs, convenience, and general welfare served by the required actions. The conditions that limit the scale, design and scope of future development on the site are also necessary to protect the best interests of and to assure a development more compatible with surrounding properties and the overall pattern of the existing development in the community, to secure an appropriate development in harmony with the General Plan as discussed in Findings Section 1. The existing Permeant Qualified Q condition is not

proposed for change as it has been in effect since 2005 and is related to the CDO. The Q prohibits certain uses, and regulates building height, signage, and parking.

Design Overlay Plan Approval Findings pursuant to LAMC Section 13.08

4. The project substantially complies with the adopted Community Design Overlay Guidelines and Standards.

The proposed project would replace a portion of an existing surface parking lot with improved outdoor school facilities including an open recreation area with a landscaped grass field, a modular restroom and storage facility, and an outdoor covered student activity area with a solar shade structure 25 feet in height. A portion of the parking lot will be re-striped and maintained as a surface parking lot with the addition of landscaping and trees. The project also includes installation of an eight-foot tall concrete masonry unit block wall along the southern property line and a six-foot tall security fence along the east and west property lines.

The proposed Project is located in a Community Commercial General Plan Land Use Designation within in the Reseda-West Van Nuys Community Plan and is further located within the Central Business District of Reseda Community Design Overlay District (CDO). The project, as proposed and conditioned herein, demonstrates compliance with the guidelines and standards (Section 5) of the adopted CDO as described below.

In compliance with Section 5.A of the CDO, proposed fences and freestanding walls are conditioned to comply with Guideline 6, Standard 6a, and Standard 6b of the CDO. Consistent with the CDO, a combination wrought iron and masonry wall is proposed. Masonry wall materials are conditioned to comply with the CDO's standard materials (brick, stone, split face concrete, or other decorative materials). A condition to prohibit the use of chain link fencing is also included.

In compliance with Section 5.B of the CDO, proposed landscaping includes softscape and hardscape, introduces a variety of species of trees and shrubs on a site where there were previously none, and includes a required minimum 15 foot wide landscaped buffer along the southern property line abutting single family zoned properties.

In compliance with Section 5.C of the CDO, building colors are conditioned to coordinate with the existing school building's blue gray color scheme. Highly reflective colors are prohibited in the conditions. The conditions require shielded lighting to be provided on-site. Consistent with the security devices guidelines and standards, a condition has been added prohibiting barbed wire, razor wire, and concertina wire.

Section 5.D of the CDO regarding signage does not apply to the proposed project as no signage is proposed for the site.

Therefore, the project complies with all subsections (A through D) of the Section 5, *Design Guidelines and Standards* of the CDO.

5. The structures, site plan and landscaping are harmonious in scale and design with existing development and any cultural, scenic or environmental resources adjacent to the site and in the vicinity.

The property to the north of the alley is developed with the Magnolia Science Academy 1 classroom and administrative buildings. The eastern and western adjoining properties are developed with surface parking. The southern adjoining properties are zoned R1 and are

developed with four single-family dwellings. The site is not adjacent to, or in the vicinity of, any recognized and/or known cultural, scenic, or environmental resources.

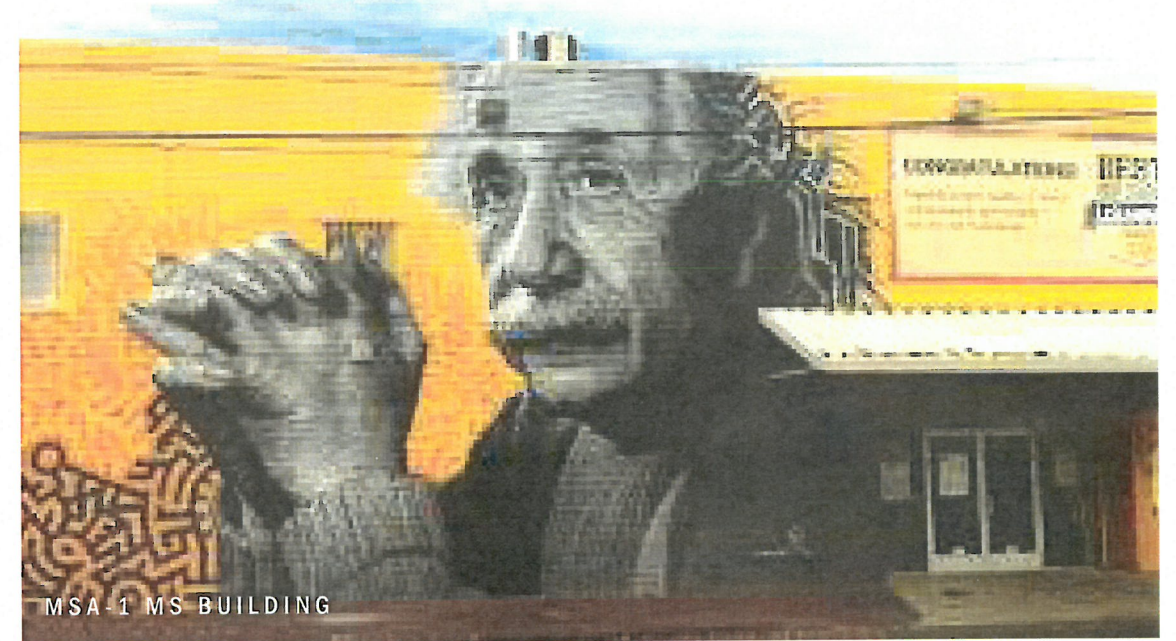
The project's proposed structures, site plan and landscape plan are harmonious in scale and design with existing development and will provide a visual improvement to the surrounding community. The site's asphalt surface parking lot will be replaced with an open recreation area with a landscaped grass field, a modular restroom and storage facility, and an outdoor covered student activity area with a solar shade structure. A portion of the parking lot will be re-striped and maintained as a surface parking lot with the addition of landscaping and trees. A 15-foot wide landscaped buffer with shrubs and trees will be located on the southern property line adjacent to the single family homes, providing screening, beautification, and privacy for the neighboring properties. The solar shade structure is proposed 25 feet in height and is compliant with the height requirements for structures in commercial zones that abut R1 single family zones (LAMC Section 12.21.1-A.10). Currently there is no landscaping in the parking lot and thus the proposed landscaped recreational areas and landscaped parking lot will add greenery to an otherwise asphalt parking lot. Thus, the structures, site plan and landscaping are harmonious in scale and design with existing development.

Environmental Findings

6. **Environmental Findings.** Pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the Mitigated Negative Declaration, No. ENV-2019-1065-MND, as circulated on August 22, 2019, ("Mitigated Negative Declaration"), and all comments received, with the imposition of mitigation measures, there is no substantial evidence that the project will have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the City. The mitigation measures have been made enforceable conditions on the project and a Mitigation Monitoring Program prepared for the Mitigated Negative Declaration
7. **Flood Insurance.** The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.



MSA-1 MS BUILDING



MSA-1 MS BUILDING



NEW MSA-1 HS BUILDING (FALL 2018)



NEW MSA-1 HS BUILDING (FALL 2018)

MAGNOLIA SCIENCE ACADEMY 1 MASTERPLANNING

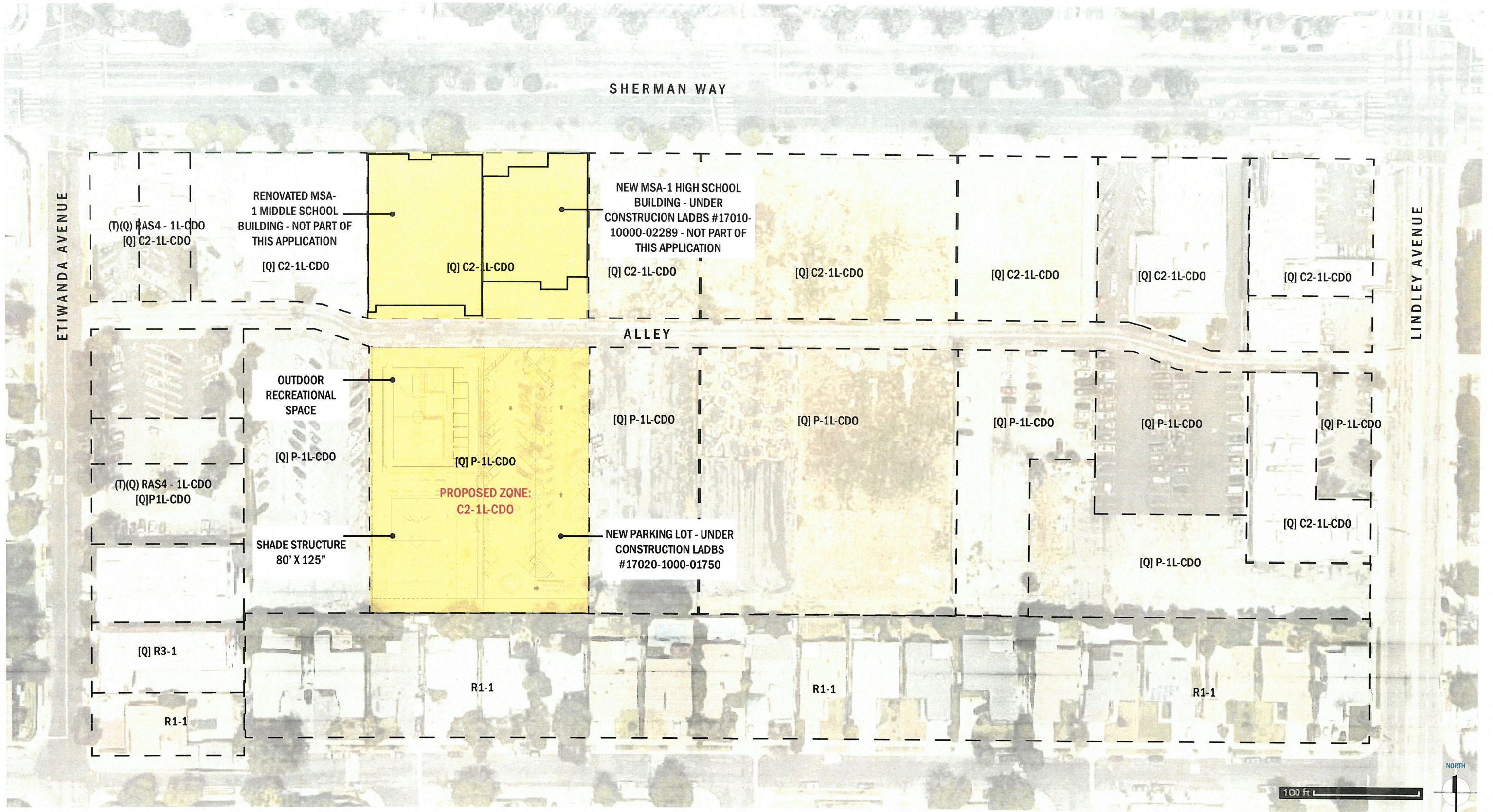
SEPTEMBER 10, 2019

gkkworks | CANNONDESIGN



**Received by Planning
September 12, 2019**

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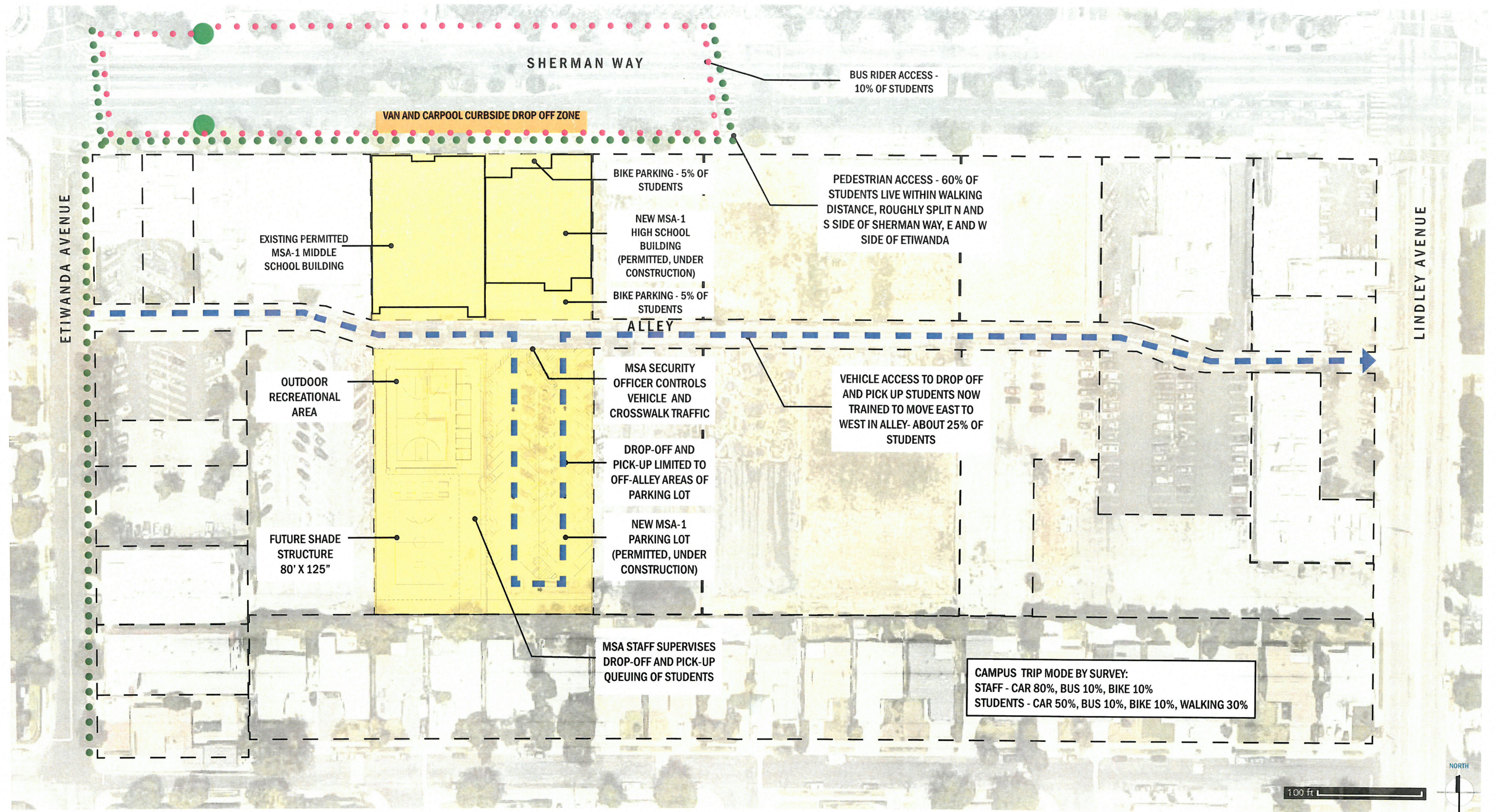


CURRENT & PROPOSED ZONING

MAGNOLIA SCIENCE ACADEMY 1 - MASTERPLANNING

EXHIBIT A

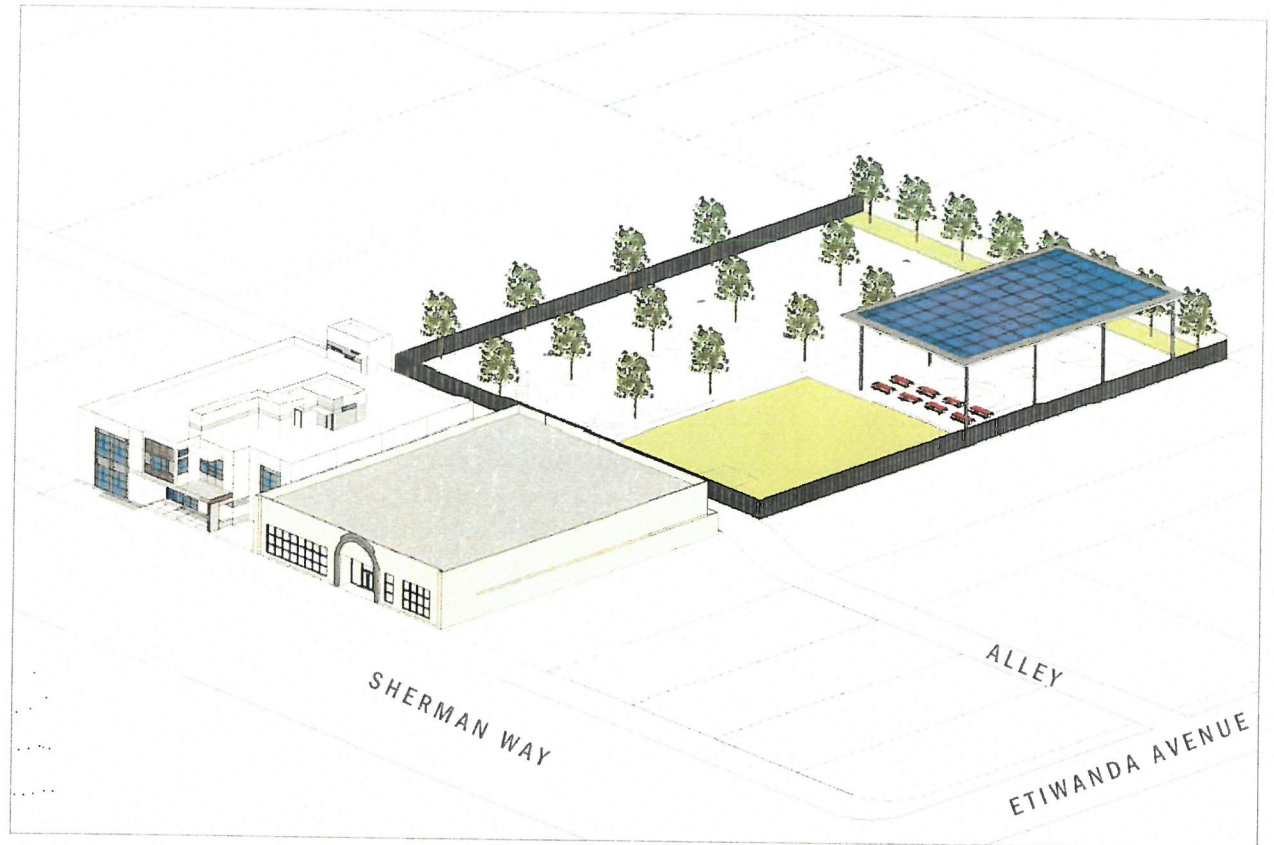
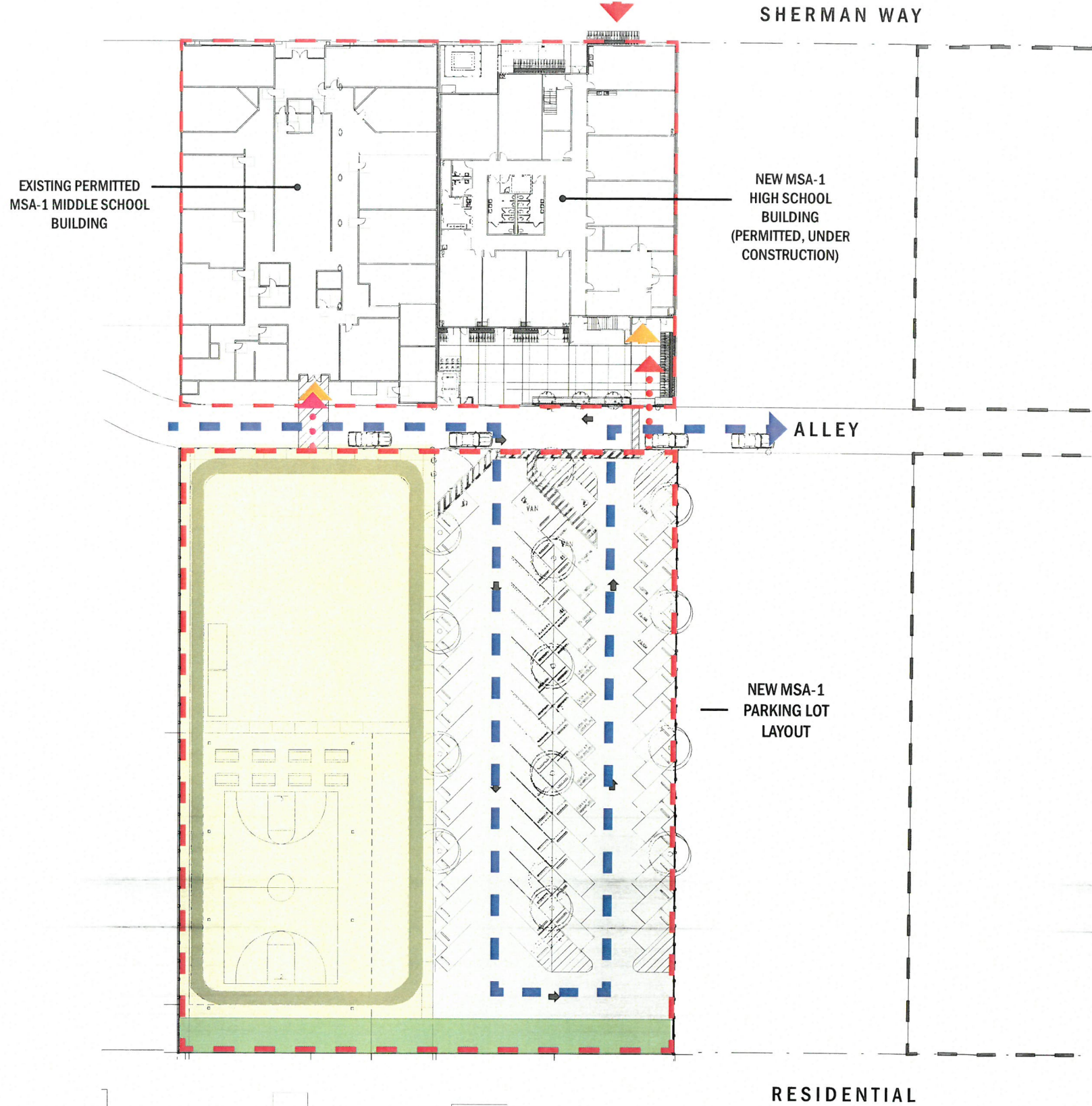
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CAMPUS ACCESS PATHWAYS

MAGNOLIA SCIENCE ACADEMY 1 - MASTERPLANNING

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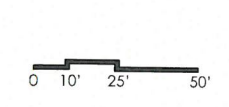
-  MSA-1 SITE
-  MAIN CAMPUS ENTRY
-  STUDENT ENTRY
-  DROP-OFF / PICK-UP LOOP

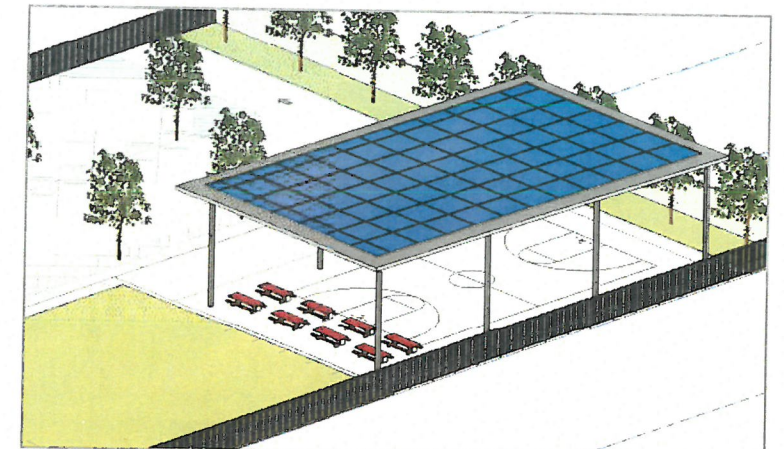
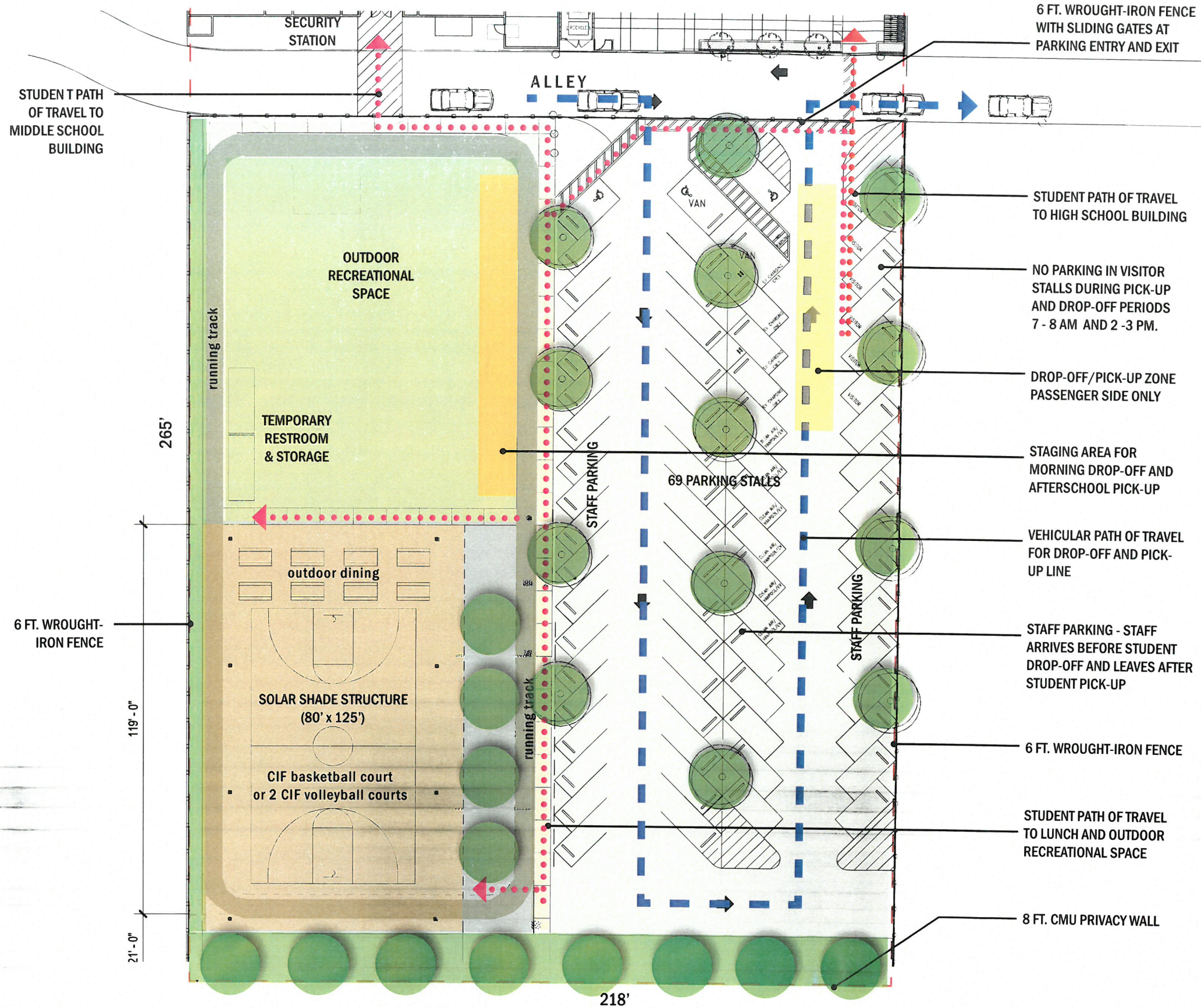


ENTIRE CAMPUS VIEW

MAGNOLIA SCIENCE ACADEMY 1 - MASTERPLANNING

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SOLAR SHADE STRUCTURE



MODULAR RESTROOM

PLAN WITH SOLAR SHADE STRUCTURE





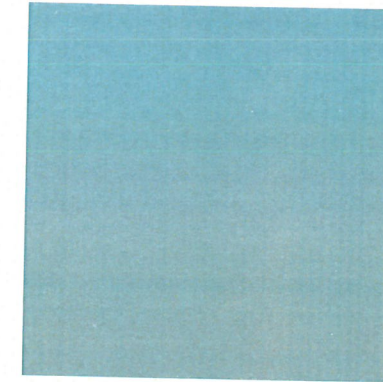
ARA3

NEW LIGHT POLES AT WEST PRPOERTY TO MATCH LIGHT POLES AT EAST PROPERTY (PICTURED ABOVE)



PROPOSED LIGHT FIXTURE AT SHADE STRUCTURE METEOR WHIZ SERIES OUTDOOR HIGH CEILING FIXTURE

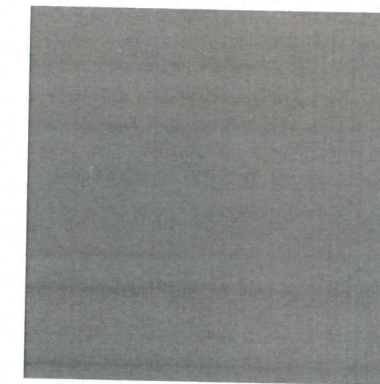
EXTERIOR PAINT FOR TEMPORARY RESTROOM STRUCTURE TO MATCH EXISTING PAINT COLOR AT MSA-1 HIGH SCHOOL BUILDING



DE5787 PACIFIC PALISADE

DE6372 LACE VEIL

EXTERIOR PAINT FOR SHADE STRUCTURE TO MATCH EXISTING PAINT COLOR AT MSA-1 HIGH SCHOOL BUILDING



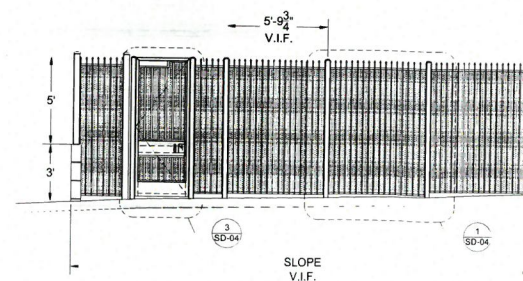
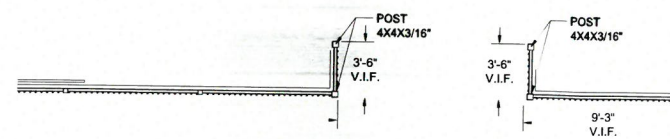
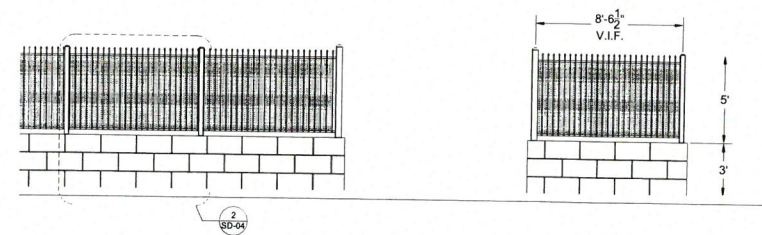
DE6348 DRAW YOUR SWORD



CUSTOM BUILT SHADE STRUCTURE

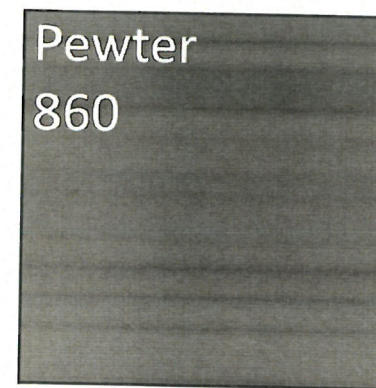


NEW WROUGHT IRON FENCE AT SOUTH PROPERTIES TO MATCH NEW FENCE AT NEW MSA-1 HIGH SCHOOL (PICTURED ABOVE)

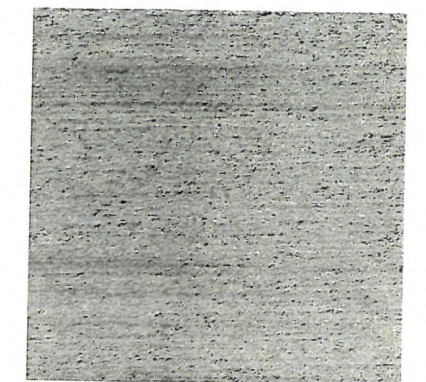


1

2



WALKWAY PAVING ALTERNATING PATTERN: COLORED SANDBLASTED FINISH AND NATURAL CONCRETE IN BROOM FINISH

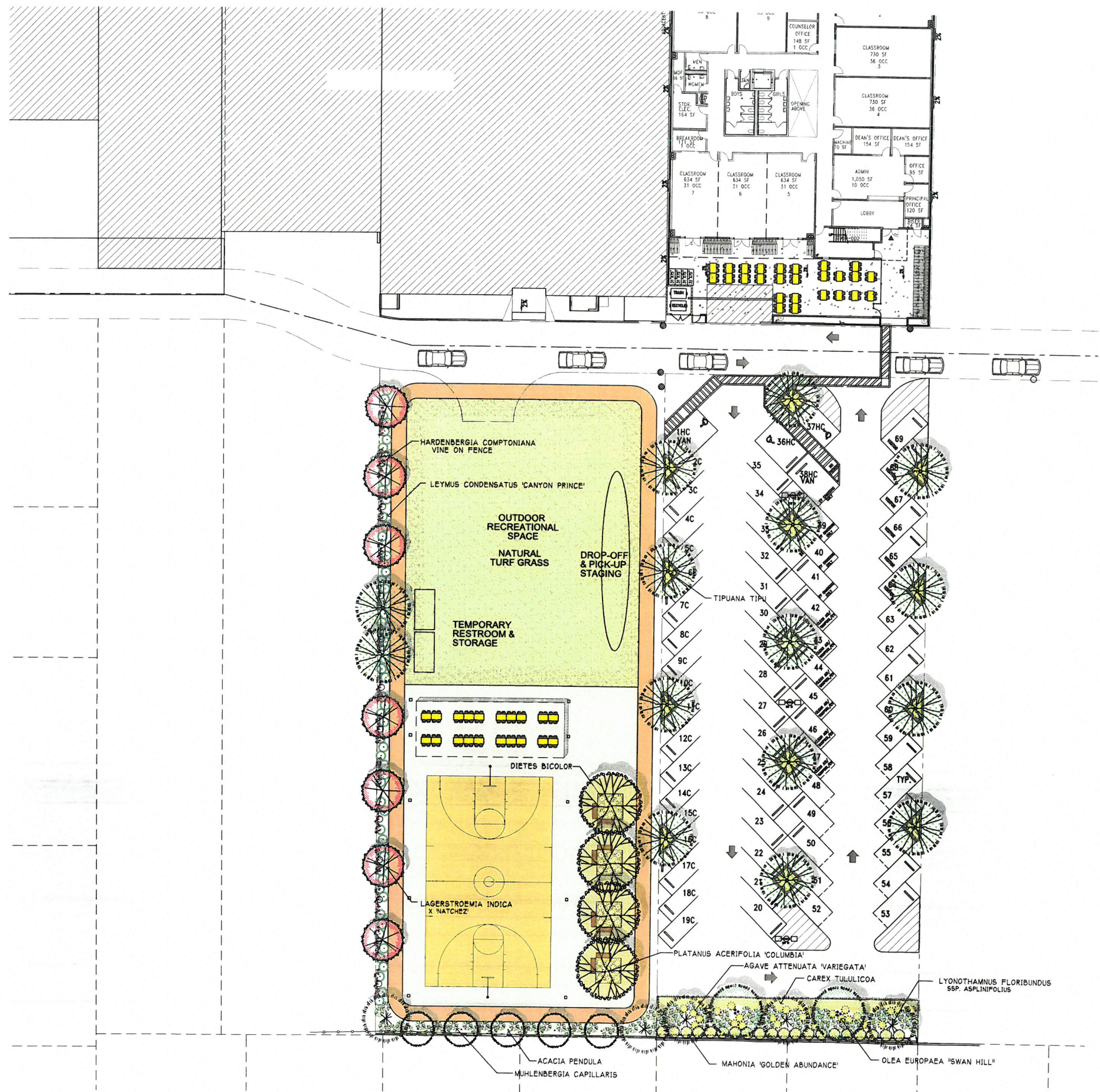


MATERIALS AND FINISHES

MAGNOLIA SCIENCE ACADEMY 1 - MASTERPLANNING

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PLANT MATERIAL LEGEND

TREES

- PLATANUS ACERIFOLIA 'COLUMBIA'
LONDON PLANE TREE
- TIPUANA TIPU
TIPU TREE

SMALL TREES / LARGE SHRUBS

- ACACIA PENDULA
WEeping ACACIA
- OLEA EUROPAEA 'SWAN HILL'
FRUITLESS OLIVE
- LAGERSTROEMIA INDICA
'NATCHEZ'
- LYONOTHAMNUS FLORIBUNDUS
SSP. ASPLINIFOLIUS
SANTA CRUZ IRONWOOD

LOW WATER USE GRASSES AND GRASS-LIKE PLANTS

- LEYMUS CONDENSATUS 'CANYON PRINCE'
WILD RYE
- MUHLENBERGIA CAPILLARIS
PINK MUHLY
- CAREX TULINICOA
BERKELEY SEDGE

LOW WATER SHRUBS AND PERENNIALS

- AGAVE ATTENUATA 'VARIEGATA'
FOXTAIL AGAVE
- DIETES BICOLOR
AFRICAN LILY
- MAHONIA 'GOLDEN ABUNDANCE'
GOLDEN ABUNDANCE MAHONIA

LOW WATER USE VINES

- HARDENBERGIA COMPTONIANA
LILAC VINE

ALL PROPOSED PLANTING IS CLASSIFIED LOW WATER USE AND NON-INVASIVE BY STATE OF CALIFORNIA PUBLISHED REFERENCES

**Received by Planning
June 26, 2019**

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**LANDSCAPE MASTER PLAN
SCALE: 1/16"=1'-0"**

FRANCO ARCHITECTS INC.
12345 Venture Blvd. H
Shubot City, CA 91904
Tel 619 754-0200
Fax 619 754-0208

Consultant
CARTER ROMANEK
Landscape Architects, Inc.
28720 Rossmore Dr., Suite 100
San Diego, California 92131
(619) 477-3860

MAGNOLIA SCIENCE ACADEMY (PARKING)
18220 & 18238 SHERMAN WAY, RESEDA, CA 91335

REV	DESCRIPTION	DATE



PROJECT	MAGNOLIA SCIENCE ACADEMY
PROJECT ADDRESS	18220 & 18238 SHERMAN WAY RESEDA, CA 91335
DATE OF PLAN	LANDSCAPE MASTER PLAN
DATE BY	CRLA 6/20/2019
DATE CHECKED	AS NOTED
DATE APPROVED	

Exhibit D

Soils Report

Follow Link:

<https://www.dropbox.com/sh/r50ihghnhjzrwve/AAAiRKUhML-PFhnvSqGiiQeha?dl=0>

Exhibit E

Form of Agreement -- AIA A141-2014 Standard Form of Agreement between Owner and Design-Builder

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

« »
« »
« »
« »

and the Design-Builder:
(Name, legal status, address and other information)

« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

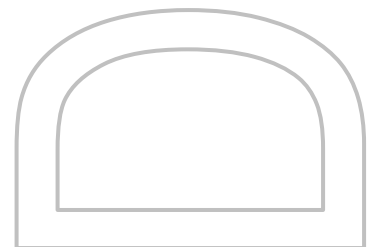
« »
« »
« »

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

« »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

« »

.5 Other milestone dates:

« »

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

« »

.2 Consultants

« »

.3 Contractors

« »

§ 1.1.9 Additional Owner’s Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner’s Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner’s Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner’s Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

« »
« »
« »
« »
« »
« »

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:
(List name, address and other information.)

« »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

« »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

(List name, address and other information.)

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 14.4

Litigation in a court of competent jurisdiction

Other: *(Specify)*

<< >>

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the

Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior to Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

« »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of << >> percent (<< >> %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid << >> (<< >>) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.
(Insert rate of monthly or annual interest agreed upon.)

<< >> % << >>

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in

writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief,

the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an

alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the

Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

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§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires

additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder

promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Design-Builder” in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder’s construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder’s Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder’s Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner’s Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The

Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and

other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and

insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon

recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in

derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time

period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim

in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect,

Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:
 « »
- .6 Other:
 « »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)
« »

(Printed name and title)

DESIGN-BUILDER (Signature)
« »

(Printed name and title)



Exhibit D

Solar Shade Structure Design

&

Proposal

BUDGETARY SOLAR PHOTOVOLTAIC PROPOSAL FOR: MAGNOLIA SCIENCE ACADEMY

18220 Sherman Way
Reseda, CA 91355

7/19/21



THE STRENGTH BETWEEN SUN AND SHADE
CONSTRUCTING A RENEWABLE FUTURE



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EXECUTIVE SUMMARY

Magnolia Science Academy

Installation Type	Non-Solar Full Coverage Canopy
Structure Size	10,069 SF
Total Price	\$340,164
Unit Price	\$33.78/SF



M BAR C RENEWABLES



M BAR C RENEWABLES

CONSTRUCTING A RENEWABLE FUTURE

Recycling our natural resources. Saving money. Providing for the future.

M Bar C's Renewable Energy division was created to meet the increasing demands for sustainable energy. From Solar PV to Advanced Energy Storage, we offer a variety of custom energy upgrades designed to meet your specific needs. M Bar C is now your one-stop-shop for everything under the sun.

TAKE A DEEPER LOOK

M Bar C has vertically integrated. With in-house services we have effectively reduced multiple layers of communication and markup. We pride ourselves in efficient project management, coordination, and meeting deadlines. This efficiency in simplicity has been the key to success for small and large scale projects.

WHO WE ARE



M Bar C Construction Inc., is the industry leader in the design and construction of custom solar carports. With over 60 Megawatts installed in 2017, we hold the largest market share for carports in the United States. M Bar C Construction Inc. is a recognized world-class steel contractor, dedicated to superior construction practices, innovative product development and the highest production safety standards.



M BAR C CONSTRUCTION™

CONSTRUCTING A RENEWABLE FUTURE

WHY CHOOSE US?

INDUSTRY LEADER We have the greatest market share of solar carports in the country. We are leading the industry with cutting edge designs and construction practices.

QUALITY Our reputation is built from quality. We build the best product, provide the best service and deliver what is promised. We maintain quality materials, construction & project management.

SAFETY Our crews are highly trained to handle the latest materials and equipment, and maintain Cal/OSHA compliance at all times. We set the bar higher than the industry standard.

ATTENTION TO DETAIL From the earliest planning stages to a clean work site at the end of each day, M Bar C is keenly aware of every aspect for each project.

EFFICIENCY Our extensive and diverse experience allows us to maximize productivity without cutting corners. This assures maximum value and on time project completion.

VALUES Our company is built on a culture of family, integrity, commitment, quality, growth & leadership. These principles manifest into a positive customer experience.

CUSTOMER SATISFACTION



WHAT DO CUSTOMERS SAY ABOUT US?

“M Bar C Construction is fast and professional. They take safety seriously and stick to the plan. Our Project Manager was impressed. We like working with them!”

Kevin M Clements, LEED® AP
Director of Project Development,
EMCOR Group, Inc.

“Thanks for all the great work on site through this project as well. Your team is an example of what others should look to as how it should be done.”

Joshua Goldberg
Site Superintendent,
Borrego Solar Systems, Inc.

“I love having you guys on my projects because you show up with a small crew, but it’s like you bring an army! You work faster and cleaner than anyone else I’ve worked with. Thank you!”

Alex
Superintendent
Solar City/Tesla



M^{BAR}C CONSTRUCTION™

CONSTRUCTING A RENEWABLE FUTURE

SAMPLE STRUCTURE TYPES

(CUSTOM DESIGNS AVAILABLE)



LOCATION Mountain Valley, CA
STRUCTURE TYPE Ground Mount & Carports



LOCATION Los Angeles, CA
STRUCTURE TYPE Rooftop



LOCATION Chula Vista, CA
STRUCTURE TYPE Parking Garage – “T” Structure



LOCATION Vista, CA
STRUCTURE TYPE “T” Structure



LOCATION Carlsbad, CA
STRUCTURE TYPE Semi-Cantilever Structure



LOCATION San Jacinto, CA
STRUCTURE TYPE Ground Mount

PROJECTS – SAMPLE LISTING



SCHOOLS/COLLEGES Alliance College-Ready Public Schools: College Ready Middle Academy 4, College Ready Middle Academy 5, Renee & Meyer Luskin College Ready Academy, Patti & Peter Neuwirth Leadership Academy, Cindy & Bill Simon Technology High, Jack H. Skirball Middle, Ted K. Tajima High. SIATech Administrative Offices, Bright Star Valor Academy, Discovery Charter Preparatory, Vista Charter Middle

GOVERNMENT/MILITARY/MUNICIPAL Camp Pendleton (*multiple sites*), NAS Miramar (*multiple sites*), NAS North Island, MCRD, FAA TRACON, Grand Junction VA, Monterrey VA, West Los Angeles VA, March AFB, Carpinteria Valley Water District

CORPORATE Google, Bayer Health Care, Wells Fargo, Intel, Hunter Industries, Tustin Metro Link, Sierra Toyota, Palm Springs Motors, Novartis Pharmaceuticals, Edwards Life Sciences

SPECIALTY DESIGN San Diego Zoo, Tesla HQ, Galpin Ford, McDonalds (Riverside), Taco Bell (Riverside), Contra Costa Community College, Saddleback College, Alga Norte Park

GROUND MOUNTS Mojave/California City, US Gypsum, Taft, Cerro Coso College, Two Bunch Palms, Bubbling Wells Elementary, City of Riverside, Riverside County, Lucia Mar USD

NEW CONSTRUCTION Cypress Walk, Pulse Millenia Apartments, Quarry Creek Apartments, Skyline Elementary

NON-PROFITS Calvary Chapel, St. Patrick's Church, Mission Hills Church, Lighthouse Baptist Church, St Charles Borromeo Church & School, Corpus Christi Church, St. Pius X Church & School, St. Francis of Assisi Church & School



SCOPE OF WORK

GENERAL OVERVIEW

- M Bar C's custom designed solar-ready carports are made of the highest quality HSS tube steel columns and beams. This durable and structurally sound approach imbeds each column at the footing and uses a welded-side plate connection, eliminating bolted connections for an aesthetically pleasing look. The combination of site-specific engineering and a high quality M Bar C installation culminate in an efficient and reliable PV system.

PRICING INCLUDES

- (1) solar ready two post long span canopy
- Procurement of materials: Steel
- Structural design & engineering
- Construction of system with all applicable building codes, plans, and specifications
- HSS columns and beams with light gauge "C" purlins
- Installation of approximately 10,069 SF of two post long span solar ready canopies
- Coring of asphalt for footings if no conflicts occur
- All sales tax for material purchases

WARRANTIES

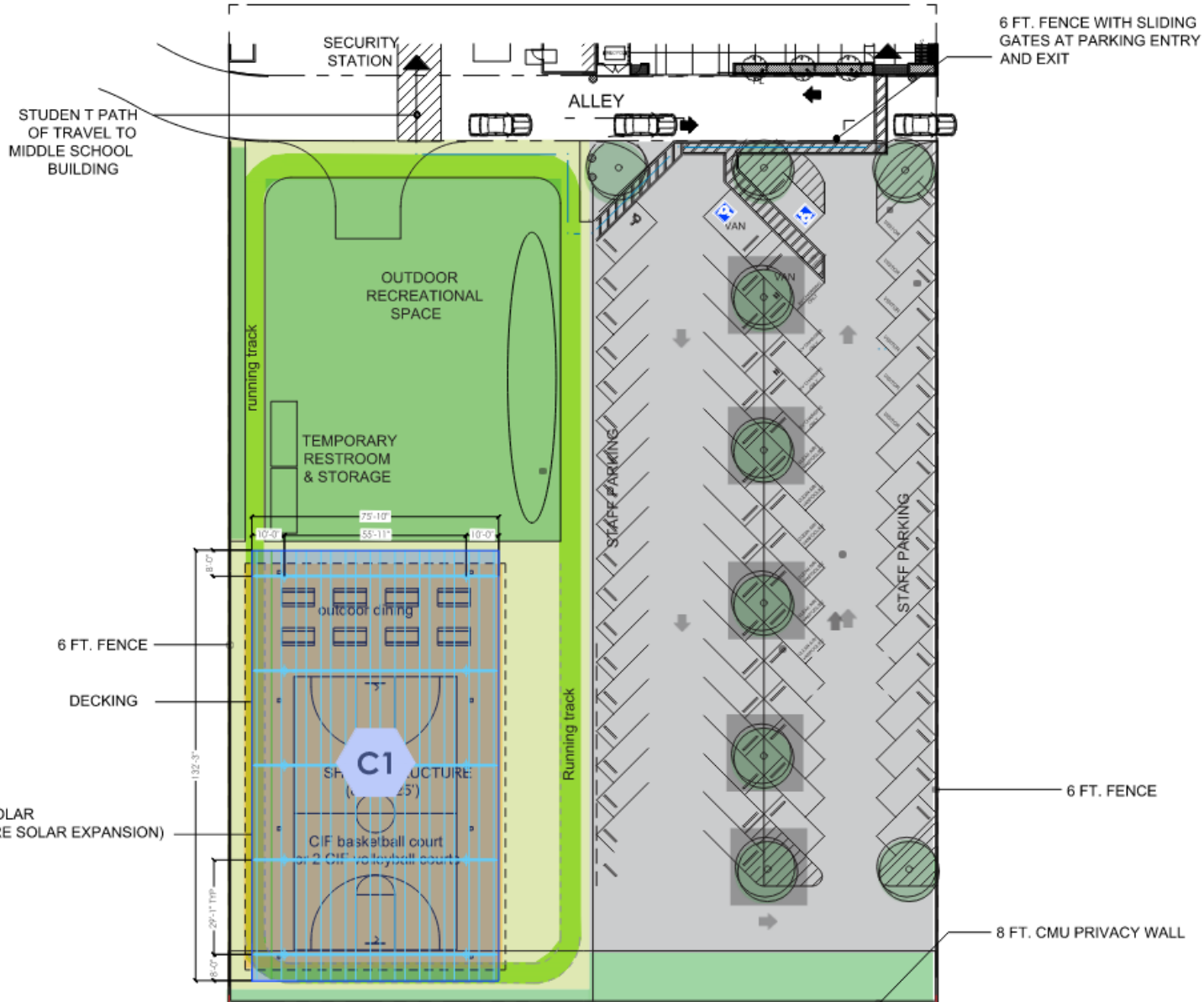
- M Bar C Workmanship Warranty
1-year workmanship on all Columns, Beams, Purlins, and Concrete as per M Bar C Construction Inc., Drawings & Specifications for the period beginning at substantial completion and acceptance of M Bar C Construction Inc's scope of work and ending (1) year after that date. After the 1-year warranty period, M Bar C will pass through all individual supplier warranties with specific details on the coverage. Detailed manufacturer warranties can be provided upon request.



CONCEPTUAL LAYOUT: OPTION #1

NOTES:

1. ALL DIMENSIONS INDICATED ARE TENTATIVE AND TO BE FIELD VERIFIED



CONTRACTOR'S LICENSE



LICENSE # 869960

M Bar C Construction, Inc.

1770 La Costa Meadows Dr
San Marcos, CA 92078
Business Phone Number: (760) 744-4131

Entity: Corporation
Issue Date: 12/22/2005
Expire Date: 12/31/2021

License Status: Current & Active

Classifications: **B, C51**

PRICING: ASSUMPTIONS

1. All technology & equipment specified in this project will meet or exceed all current safety, environmental and interconnection standards, as well as all facility structural weight and fire safety requirements
2. Building department and utility inspections will be scheduled during normal business hours
3. Pricing assumes M Bar C employees will have free and clear access to array location during business hours (M-F 0700-1700)
4. Engineering included provides the structural framing package and the structural calculations package only for integration into the permit submittal package (by others). Specifically excluded are site plans, column layout plans, equipment pads, equipment attachment details, site visits, as-built drawings, submittal review, cad standard, military/government projects, site-specific architectural, electrical, mechanical, title-24, BMP, civil, SWPPP, and SUSUMP, etc. Quotes for these services and others are available upon request.
5. System layout is acceptable to AHJ in terms of clearances
6. Single mobilization and completion of project in one phase
7. Current/accurate as-builts in the form of CAD files will be provided by others as basis of design
8. Architectural, civil, and any surveying will be provided by architect of record
9. M Bar C has allocated \$3,500 for special inspection fees. M Bar C will adjust the amount billed to reflect actual values in the form of a change order.
10. On-site staging areas are available for storage of equipment and materials
11. No special safety requirements beyond M Bar C Construction's standard safety regulations will be enforced
12. 29'-0" bays assumed for all structures
13. 2-degree tilt assumed
14. 23'-0" clear height assumed for all structures
15. M Bar C assumes ground is fairly level. Change in grade should be + or - 1/10th grading performance standard. Following grade assumed.
16. Pricing includes coring of asphalt for footings if no conflicts occur
17. Hot dipped galvanized columns and beams
18. Pricing is based on soils reports provided by client. If any conditions not specifically stated in the geotechnical information provided are experienced, additional costs for mitigation may be incurred.
19. Roof live load for solar-ready canopy with roof decking loading subject to change per site conditions
20. Site conditions unverified (no site walk performed; pricing subject to change)
21. Any underground conduits for future solar will be installed by 'Others'.
22. While USA will be called out on every project, some sites may not be accessible in which case it will be the owner's responsibility to engage a third party for utility mark out. M Bar C is not responsible for damage to unmarked underground utility lines including but not limited to electrical, gas, water, sewer, irrigation, fiber optic, television etc.
23. Ground penetrating radar (GPR) is accurate down to a depth of 3'-4'. There may be underground utilities below this level that are untraceable with GPR that would require the use of an underground camera to be located at additional cost.
24. Temporary facilities including dumpsters, toilets, handwash stations, etc. will be provided by 'Others'
25. Pricing is based on private wage rates
26. Final pricing is subject to change based on formal engineering
27. The cost of steel at time of execution of this contract is high and volatile. Contractor and Subcontractor will collaborate to minimize the impact of steel cost, but contract price is expected to require adjustment to accommodate steel costs at time of steel shipment.

PRICING: EXCLUSIONS

1. Hard Rock Drilling, Underground Obstructions, Caving Soils, Casing, and Water Mitigation. *NOTE: The client should consider carefully whether M Bar C should “attempt” to drill when conditions are present such that it can be reasonably assumed that subsurface conditions are likely to result in M Bar C’s inability to drill successfully. Under this scenario, costs to the client will be lower if a sub driller is engaged from the beginning. No credit from M Bar C will be available, if an “ill-advised” attempt to have M Bar C drill is made.
2. Existing as built document creation and circuit tracing of existing electrical system due to inaccurate or missing as built information
3. Supplying, installing, and maintaining a storm water pollution prevention plan (SWPPP)
4. Any underground trenching or providing any underground conduits
5. Fire alarm, fire sprinkler, CCTV, security or communication work
6. Concrete coring, cutting, demolition, repair, or replacement
7. Redesigns after the 100% drawing submittal to the AHJ
8. Removal and/or disposal of hazardous materials
9. Union Wages, Skilled Workforce Requirements
10. Any excavation beyond column foundations
11. Pedestrian & vehicle traffic control
12. Landscaping and/or tree removal
13. Re-creation of building plan sets
14. Permitting and associated fees
15. Skilled workforce requirements
16. Design of low voltage systems
17. Lightening protection systems
18. Demolition of any light poles
19. ADA design/compliance
20. Painting of the structure
21. Prevailing wage rates
22. Concrete abutments
23. Painting of conduits
24. Sprinklers & gutters
25. Permanent fencing
26. Destructive testing
27. Survey services
28. Bonding

