

# Youth Policy Institute Charter Schools (YPICS)

## Board Meeting

---

### Date and Time

Monday October 24, 2016 at 6:00 PM PDT

### Location

Monsenor Oscar Romero Charter School - 1157 S. Berendo Street, Los Angeles, CA 90006; Board Member Jonathan Williams calling in from 4000 S. Main Street, Los Angeles, CA 90037; Conference Call: (605) 562-3000, Access# 1004153

---

Meeting being held at Monsenor Oscar Romero Charter School, 1157 S. Berendo St., Los Angeles CA 90006; Board Member calling in from 4000 S. Main Street, Los Angeles, CA 90037

---

### Agenda

	Purpose	Presenter	Time
<b>I. Opening Items</b>			<b>6:00 PM</b>
Opening Items			
<b>A.</b> Record Attendance and Guests		Yesenia Zubia	1 m
<b>B.</b> Call the Meeting to Order		Gene Straub	1 m
<b>C.</b> Flag Salute			5 m
<b>D.</b> Additions/Corrections to Agenda		Gene Straub	2 m
<b>E.</b> Minutes of Previous Regular Meeting	Approve Minutes	Gene Straub	2 m

Minutes of September 26, 2016 Regular Meeting of the Board of Directors will be presented for Approval.

*It is recommended that the Board approve the minutes from the previous meetings.*

Approve minutes for Board Meeting on September 26, 2016

Purpose Presenter Time

**II. COMMUNICATIONS**

**6:11 PM**

Academic Excellence

- A. Presentations from the Public** FYI Gene Straub 5 m

Any persons present desiring to address the Board of Directors on any proper matter.

The YPI Charter Public Schools ("Charter Schools") welcome your participation at the Charter Schools' Board meetings. The purpose of a public meeting of the Board of Directors ("Board") is to conduct the affairs of the Charter Schools in public. Your participation assures us of continuing community interest in our Charter Schools. To assist you in the case of speaking/participating in our meetings, the following guidelines are provided:

*Agenda Items:* No individual presentation shall be more than five (5) minutes and total time for this purpose shall not exceed thirty (30) minutes per agenda item.

*Non-Agenda Items:* No individual presentation shall be for more than three (3) minutes and total time shall not exceed fifteen (15) minutes.

When addressing the Board, speakers are requested to state their name and address from the podium and adhere to the time limits set forth.

Ordinarily, Board Members will not respond to presentations and no action can be taken. However, the board may give direction to staff following a presentation.

Any public records relating to an agenda item for an open session of the Board which are distributed to all of the Board members shall be available for public inspection at 1157 S. Berendo Street, Los Angeles, California 90006, 12513 Gain Street, Pacoima, CA 91331, 9400 Remick Avenue, Pacoima, California 91331 and 10660 White Oak Avenue, Granada Hills, CA 91344.

Americans with Disabilities

YPI Charter Schools, Inc. adheres to the Americans with Disabilities Act. Should you require special accommodations, or more information about accessibility, please contact us at least 48 hours in advance at 818-834-5805/ 213-413-9600, or [info@coronacharter.org](mailto:info@coronacharter.org) / [info@romerocharter.org](mailto:info@romerocharter.org). All efforts will be made for reasonable accommodations.

- B. Treasurer/ CFOs Report** FYI Irina Castillo 5 m

Irina Castillo, VP Finance, ExED - YPICS Treasurer and Chief Financial Officer

- C. Director's Reports** FYI 5 m
- D. Executive Director's Report** FYI Yvette King-Berg 5 m

Purpose      Presenter      Time

**III. ITEMS SCHEDULED FOR INFORMATION** **6:31 PM**

- |  |     |                  |     |
|--|-----|------------------|-----|
| <b>A.</b> November 8, 2016 Presidential Election | FYI | Yvette King-Berg | 5 m |
| <b>B.</b> Central Office Lease                   | FYI | Yvette King-Berg | 5 m |

**IV. CONSENT AGENDA ITEMS** **6:41 PM**

Audit

- |                      |     |
|----------------------|-----|
| <b>A.</b> Background | FYI |
|----------------------|-----|

All matters listed under the consent agenda are considered by the Board to be routine and will be approved/ enacted by the Board in one motion in the form listed below. Unless specifically requested by a Board Member for further discussion or removed from the agenda, there will be no discussion of these items prior to the Board's vote on them. The Executive Director recommends approval of all consent agenda items.

**V. ITEMS SCHEDULED FOR ACTION** **6:41 PM**

- |   |      |              |      |
|---|------|--------------|------|
| <b>A.</b> MORCS Construction Amendment to the Development Agreement | Vote | Ruben Duenas | 5 m  |
| <b>B.</b> MORCS Building Construction Contract Approval             | Vote | Ruben Duenas | 15 m |

**VI. ANNOUNCEMENTS**

**VII. Closing Items**

- |                           |      |
|---------------------------|------|
| <b>A.</b> Adjourn Meeting | Vote |
|---------------------------|------|

# Coversheet

## Minutes of Previous Regular Meeting

<b>Section:</b>	I. Opening Items
<b>Item:</b>	E. Minutes of Previous Regular Meeting
<b>Purpose:</b>	Approve Minutes
<b>Submitted by:</b>	
<b>Related Material:</b>	Minutes for Board Meeting on September 26, 2016



**APPROVED**

# Youth Policy Institute Charter Schools (YPICS)

## Minutes

### Board Meeting

---

#### Date and Time

Monday September 26, 2016 at 6:00 PM

#### Location

Bert Corona Charter School - 9400 Remick Avenue, Pacoima CA 91331; Board Member calling in from 4000 S. Main Street, Los Angeles, CA 90037; Conference Call: (605) 562-3000, Access# 1004153

---

Meeting being held at Bert Corona Charter School - 9400 Remick Avenue, Pacoima CA 91331; Board Member calling in from 4000 S. Main Street, Los Angeles, CA 90037; Conference Call: (605) 562-3000, Access# 1004153

---

#### Trustees Present

A. Reza, G. Straub, J. Lucente, M. Keipp

#### Trustees Absent

C. Vaquerano, J. Williams, S. Mendoza

#### Guests Present

I. Castillo, R. Duenas, Y. King-Berg, Y. Zubia

---

### I. Opening Items

#### A. Record Attendance and Guests

#### B. Call the Meeting to Order

G. Straub called a meeting of the board of trustees of Youth Policy Institute Charter Schools (YPICS) to order on Monday Sep 26, 2016 at 6:12 PM.

#### C. Flag Salute

#### D. Additions/Corrections to Agenda

#### E. Minutes of Previous Regular Meeting

J. Lucente made a motion to approve minutes from the Board Meeting on 08-22-16 Board Meeting on 08-22-16.

M. Keipp seconded the motion.

The board **VOTED** unanimously to approve the motion.

#### F.

## **Minutes of Previous Special Meeting**

### **II. CONSENT AGENDA ITEMS**

#### **A. Background**

#### **B. Recommendation to Approve 2016-2017 Homeless Education Policies for BCCS and MORCS**

M. Keipp made a motion to approve the 2016 -2017 Homeless Education Policies for BCCS and MORCS.

J. Lucente seconded the motion.

The board **VOTED** unanimously to approve the motion.

#### **C. Recommendation to Approve 2016-2017 Final Staff Rosters for BCCS, BCCHS, and MORCS**

M. Keipp made a motion to approve the 2016 - 2017 Final Staff Rosters for BCCS, BCCHS, and MORCS.

J. Lucente seconded the motion.

The board **VOTED** unanimously to approve the motion.

### **III. ITEMS SCHEDULED FOR ACTION**

#### **A. Recommendation to Approve Slate of YPICS Board Officers for the 2016 - 2017 School Year**

M. Keipp made a motion to approve the 2016 - 2017 Slate of YPICS Board Officers.

J. Lucente seconded the motion.

The board **VOTED** unanimously to approve the motion.

#### **B. Recommendation to Receive June 30, 2016 Unaudited Actual Reports for BCCS, BCCHS, and MORCS**

M. Keipp made a motion to approve the 2015 - 2016 unaudited reports for BCCS, BCCHS, and MORCS.

J. Lucente seconded the motion.

The board **VOTED** unanimously to approve the motion.

#### **C. Recommendation to Approve Education Protection Act Spending Plan for 2016-2017 School Year**

M. Keipp made a motion to approve the 2016 - 2017 Education Protection Act Spending Plan.

J. Lucente seconded the motion.

The board **VOTED** unanimously to approve the motion.

#### **D. Recommendations to Approve to Receive the \$513,000 CTEIG Award from the CDE**

### **IV. Closing Items**

#### **A. Adjourn Meeting**

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 7:04 PM.

Respectfully Submitted,  
G. Straub

# Coversheet

## Tresurer/ CFOs Report

**Section:** II. COMMUNICATIONS  
**Item:** B. Tresurer/ CFOs Report  
**Purpose:** FYI  
**Submitted by:**  
**Related Material:** 16-17 Budget MORCS Prop 1D augmentation.pdf

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

*Five Year Budget Detail*

Prepared by ExED. For use by ExED and ExED clients only. © 2016 ExED

	0	1	2	3	4
	2016-17	2017-18	2018-19	2019-20	2020-21
Enrollment	330	350	375	375	383
ADA	318.45	337.75	361.88	361.88	369.60
<b>Income</b>					
<b>8011-8096 · Local Control Funding Formula Revenue</b>					
8011 Local Control Funding Formula	2,024,353	2,291,548	2,514,203	2,651,866	2,751,518
8012 Education Protection Account	423,089	448,731	480,783	480,783	491,039
8019 Local Control Funding Formula - Prior Year					
8096 In Lieu of Property Taxes	523,777	555,521	595,201	595,201	607,899
<b>Total 8011-8096 · Local Control Funding Formula Revenue</b>	<b>2,971,219</b>	<b>3,295,800</b>	<b>3,590,187</b>	<b>3,727,850</b>	<b>3,850,456</b>
<b>8100-8299 · Other Federal Income</b>					
8181 Federal Special Education (IDEA)	61,260	64,973	69,614	69,614	71,099
8220 Child Nutrition Programs - Federal	297,382	315,395	337,923	337,923	345,132
8291 Title I, A Basic Grants Low-Income	146,070	143,035	151,704	162,540	162,540
8292 Title II, A Teacher Quality	2,114	2,070	2,195	2,352	2,352
8294 Title III, Limited English Proficiency	10,428	10,211	10,830	11,603	11,603
8296 Title V, B Charter Schools Grants	-	-	-	-	-
8297 All Other Federal Revenue	-	-	-	-	-
<b>Total 8100-8299 · Other Federal Income</b>	<b>517,253</b>	<b>535,684</b>	<b>572,266</b>	<b>584,033</b>	<b>592,727</b>
<b>8300-8599 · Other State Income</b>					
8311 Special Ed - AB602	180,485	191,423	205,096	205,096	209,472
8312 Supplemental Hourly Programs					
8434 Class Size Reduction - Grades K-3					
8520 Child Nutrition - State	24,478	25,961	27,815	27,815	28,408
8550 Mandate Block Grant	73,965	4,458	4,729	5,066	5,066
8560 State Lottery Revenue	57,639	61,133	65,499	65,499	66,897
8590 Charter School Categorical Block Grant					
8591 SB740	-	-	-	-	-
8593 Art and Music Block Grant					
8595 Secondary School Counselor					
8599 All Other State Revenues	120,071	120,071	120,071	120,071	120,071
<b>Total 8300-8599 · Other State Income</b>	<b>456,638</b>	<b>403,045</b>	<b>423,210</b>	<b>423,547</b>	<b>429,914</b>
<b>8600-8799 · Other Income-Local</b>					
8634 Food Service Sales	-	-	-	-	-
8660 Interest / Dividend Income					
8662 Net Increase (Decrease) in Fair Value of Investments					
8670 In Kind Donation					
8690 All Other Local Revenue	50,062	42,394	39,081	35,798	36,872
8698 Grants	10,000	-	-	-	-
8699 Fundraising	-	-	-	-	-
8792 Transfers of Apportionments - Special Ed					
<b>Total 8600-8799 · Other Income-Local</b>	<b>60,062</b>	<b>42,394</b>	<b>39,081</b>	<b>35,798</b>	<b>36,872</b>
8999 Prior Year Adjustment	-				
<b>TOTAL INCOME</b>	<b>4,005,172</b>	<b>4,276,923</b>	<b>4,624,744</b>	<b>4,771,228</b>	<b>4,909,968</b>
<b>Expense</b>					
<b>1000 · Certificated Salaries</b>					
1110 Teachers' Salaries	1,016,789	1,057,460	1,154,759	1,200,949	1,248,987
1120 Teachers' Hourly	-	-	-	-	-
1170 Teacher Salaries - Substitute	27,000	28,080	29,203	30,371	31,586
1175 Teachers' Salaries - Stipend/Extra Duty	26,500	27,560	28,662	29,809	31,001
1200 Certificated Pupil Support Salaries	-	-	-	-	-
1300 Certificated Supervisor and Administrator Salaries	49,025	50,986	53,025	55,146	57,352
1900 Other Certificated Salaries	-	-	-	-	-
<b>Total 1000 · Certificated Salaries</b>	<b>1,119,314</b>	<b>1,164,086</b>	<b>1,265,650</b>	<b>1,316,276</b>	<b>1,368,927</b>
<b>2000 · Classified Salaries</b>					
2100 Instructional Aide Salaries	152,624	158,729	165,078	171,681	178,548

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

*Five Year Budget Detail*

Prepared by ExED. For use by ExED and ExED clients only. © 2016 ExED

	0	1	2	3	4
	2016-17	2017-18	2018-19	2019-20	2020-21
2200 Classified Support Salaries (Maintenance, Food)	8,338	8,671	9,018	9,379	9,754
2300 Classified Supervisor and Administrator Salaries	130,104	135,309	140,721	146,350	152,204
2400 Clerical/Technical/Office Staff Salaries	188,336	195,869	203,704	211,852	220,327
2900 Other Classified Salaries (Supervision, After School)	45,162	46,969	48,848	50,802	52,834
<b>Total 2000 · Classified Salaries</b>	<b>524,564</b>	<b>545,547</b>	<b>567,368</b>	<b>590,063</b>	<b>613,666</b>
<b>3000 · Employee Benefits</b>					
3111 STRS - State Teachers Retirement System	146,043	174,221	213,373	247,125	270,760
3311 OASDI - Social Security	29,944	31,142	32,387	33,683	35,030
3331 MED - Medicare	23,836	24,790	26,579	27,642	28,748
3401 H&W - Health & Welfare	281,458	295,531	310,308	325,823	342,114
3501 SUI - State Unemployment Insurance	822	855	917	953	991
3601 Workers' Compensation	20,471	22,141	24,689	26,703	28,882
3901 403B	4,721	4,910	5,106	5,311	5,523
3902 Other Benefits					
<b>Total 3000 · Employee Benefits</b>	<b>507,295</b>	<b>553,589</b>	<b>613,358</b>	<b>667,239</b>	<b>712,049</b>
<b>4000 · Supplies</b>					
4110 Approved Textbooks and Core Curriculum Materials	18,797	20,508	45,105	22,351	23,513
4210 Books and Other Reference Materials	8,000	8,739	29,645	9,934	7,838
4310 Student Materials	79,561	79,650	80,901	80,083	83,401
4350 Office Supplies	8,000	8,485	9,091	9,091	9,285
4370 Custodial Supplies	2,000	2,121	2,273	2,273	2,321
4390 Other Supplies	40,000	43,697	48,223	49,669	51,705
4400 Non Capitalized Equipment	15,000	20,109	22,192	22,858	22,739
4700 Food and Food Supplies	319,332	340,378	366,515	368,347	378,086
<b>Total 4000 · Supplies</b>	<b>490,689</b>	<b>523,689</b>	<b>603,944</b>	<b>564,606</b>	<b>578,888</b>
<b>5000 · Operating Services</b>					
5200 Travel and Conferences	28,040	29,707	31,748	28,825	29,803
5300 Dues and Memberships	29,916	29,757	28,709	27,420	25,689
5450 General Insurance	24,765	27,054	29,856	30,752	32,350
5500 Operation and Housekeeping Services	32,800	2,884	247,626	249,515	251,460
5610 Rent - Facilities / Buildings / Space	133,900	146,276	-	-	-
5620 Equipment Lease	20,760	22,679	25,028	25,778	27,118
5630 Vendor Repairs	7,967	8,703	9,605	9,893	10,407
5812 Field Trips/Pupil Transportation	175,400	180,572	110,151	32,345	33,315
5820 Legal / Audit Fees	1,931	2,110	2,328	2,398	2,523
5830 Advertisement / Recruitment	1,150	1,184	1,220	1,257	1,294
5850 Non Instructional Consultants	78,833	76,376	80,713	82,100	84,574
5851 Instructional Consultants	162,116	162,774	164,579	165,836	167,295
5853 ExED	-	-	-	-	-
5890 Other Fees / Bank Charges /Credit Card Fees	8,086	9,022	10,008	10,308	10,617
5891 CSC Factoring Fees	-	-	-	-	-
5896 Special Ed Fair Share (LAUSD)	48,349	51,279	54,942	54,942	56,114
5897 Fundraising Cost	-	-	-	-	-
5900 Communications	50,400	51,912	53,469	55,073	56,726
<b>Total 5000 · Operating Services</b>	<b>804,413</b>	<b>802,289</b>	<b>849,981</b>	<b>776,441</b>	<b>789,286</b>
<b>6000 · Capital Outlay</b>					
6900 Depreciation Expense	15,691	13,657	6,937	208	-
<b>Total 6000 · Capital Outlay</b>	<b>15,691</b>	<b>13,657</b>	<b>6,937</b>	<b>208</b>	<b>-</b>
<b>7000 · Other Outgo</b>					
7221 Transfers to District					
7299 District Oversight Fee	29,712	32,958	35,902	37,278	38,505
7310 Indirect Costs	474,978	473,658	454,462	454,432	473,531
7438 Debt Service - Interest	-	-	-	188,074	221,290
<b>Total 7000 · Other Outgo</b>	<b>504,691</b>	<b>506,616</b>	<b>490,363</b>	<b>679,785</b>	<b>733,325</b>
<b>TOTAL EXPENSE</b>	<b>3,966,656</b>	<b>4,109,473</b>	<b>4,397,602</b>	<b>4,594,618</b>	<b>4,796,141</b>

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

*Five Year Budget Detail*

Prepared by ExED. For use by ExED and ExED clients only. © 2016 ExED

	0	1	2	3	4
	2016-17	2017-18	2018-19	2019-20	2020-21
<b>NET INCOME</b>	<b>38,516</b>	<b>167,451</b>	<b>227,142</b>	<b>176,610</b>	<b>113,828</b>
<b>Beginning Cash Balance</b>	640,767	676,110	784,847	972,956	1,026,864
<b>Cash Flow from Operating Activities</b>					
Net Income	38,516	167,451	227,142	176,610	113,828
Change in Accounts Receivable					
Prior Year Accounts Receivable	471,590	482,603	555,464	601,754	592,936
Current Year Accounts Receivable	(482,603)	(555,464)	(601,754)	(592,936)	(622,484)
Change in Due from	-	-	-	-	-
Change in Accounts Payable	(1,381)	-	-	-	-
Change in Due to	(6,468)	490	321	(147)	265
Change in Accrued Vacation	-	-	-	-	-
Change in Payroll Liabilities	-	-	-	-	-
Change in Prepaid Expenditures	-	-	-	-	-
Change in Deposits	-	-	-	-	-
Change in Deferred Revenue	-	-	-	-	-
Depreciation Expense	15,691	13,657	6,937	208	-
<b>Cash Flow from Investing Activities</b>					
Capital Expenditures	-	-	-	-	-
<b>Cash Flow from Financing Activities</b>					
Source - Sale of Receivables	-	-	-	-	-
Use - Sale of Receivables	-	-	-	-	-
Source - Loans	-	-	-	-	-
Use - Loans	-	-	-	(131,582)	(162,297)
<b>Ending Cash Balance</b>	<b>676,110</b>	<b>784,847</b>	<b>972,956</b>	<b>1,026,864</b>	<b>949,111</b>
Month with Lowest Ending Cash Balance	Sep: \$521,364	Dec: \$516,141	Dec: \$632,302	Dec: \$903,022	Dec: \$821,084
5% Reserve Goal	198,333	205,474	219,880	229,731	239,807
Net Income as a Percent of Expenses	1.0%	4.1%	5.2%	3.8%	2.4%
Ending Cash as a Percent of Expenses	17.0%	19.1%	22.1%	22.3%	19.8%
Total Project Cost			30,327,586		
LAUSD Augmentation			15,163,793		
Prop 1D total cost			15,163,793	Loan	7,581,896.50

# Coversheet

## Director's Reports

<b>Section:</b>	II. COMMUNICATIONS
<b>Item:</b>	C. Director's Reports
<b>Purpose:</b>	FYI
<b>Submitted by:</b>	
<b>Related Material:</b>	16-17.DAA Board Report.Oct21.docx COO report 10-24-16.docx





## ***DIRECTOR OF ACADEMIC ACHIEVEMENT REPORT***

**October 2016**

*The mission of the YPI Charter Schools (YPICS) is to prepare students for academic success in high school, as well as post--secondary education; prepare students to be responsible and active participants in their community; and enable students to become life-long learners. Students at YPI Charter Schools will become active citizens who characterize the ideals of a diverse and democratic society. Students will provide service to their community, take responsibility for their own learning, and develop the habits of mind and body that will empower them to be successful in high school and beyond.*

### **Professional Development:**

Our two main areas of focus for professional development this year are mastery grading and school wide positive behavior support. As a part of both of these areas of focus, we are also refocusing on the importance of gathering, tracking, and discussing data. As teachers work with students during class to master the content they are teaching, we are also using pre-assessment data to help group students into groups according to need. All students are still receiving instruction and practice at their grade level, but we are focused more on meeting student needs for remediation and for advancement. During the month of September, we utilized our central office space to have meetings with teachers where we took 3-4 hours to really dig into their classroom data, CAASPP results, and subgroup performance. We used this data to plan units and lessons that will meet the needs of all learners. During our ongoing PD times on Mondays, we are checking in with grade level teams and departments to track the effectiveness of these lessons/units and discussing the best strategies to help meet student needs.

On 10/3 we had our first full day professional development meeting of the year. Teachers and staff from all three schools met at MORCS for a great day of discussion, learning, and growth. To start the day, we had a keynote presentation from Dr. Gail Thompson. She spoke about the importance of working with all students and believing in all students. She spoke about being a turn around teachers and told stories of teachers who made a difference in her life. She challenged teachers to be that teacher who makes a difference in the lives of all students and shared strategies that will help teachers make connections with their students.

After the keynote, we moved into our sessions for the day. In an effort to create a fully professional atmosphere, we offered differentiated sessions that would meet a wide variety of needs and areas of interest. We had 3 75-minute blocks where teachers had their choice of sessions including (see schedule below):

- Classroom Structures to Support the Needs of All Learners
- Ed Tech to Engage Students
- Using Data from NWEA MAPs to Differentiate Your Classroom
- Alleviating Anxiety and Redirecting Defensive Student Behavior
- Unlocking Academic Language (Tiered Vocabulary)
- Understanding Special Education Eligibilities
- Using SFA Strategies to Support Your ELs
- Building Rapport to Build Success
- School-wide Behavior Support and Data Reflection

8am - 8:15am	<b>Welcome and Logistics for the Day</b>					
8:15am - 10:15am	<b>Keynote Speaker:</b> <b>Dr. Gail Thompson</b> <b>Making Black and Latino Students Lives Really Matter at YPICS</b>					
	<b>J101 Blended Learning</b>	<b>J102 School Culture and Climate</b>	<b>J103 SFA</b>	<b>J104 Data</b>	<b>J200 SPED</b>	<b>J203 Operations Staff Only</b>
10:30am-11:45am	<a href="#">Intentional Instructional Structures: Stepping Up Your Room for Maximum Assessment Potential</a>	<a href="#">Schoolwide Positive Behavior Support</a>	<a href="#">Unlocking Academic Language: A Tiered Approach to Vocab Instruction</a>	<a href="#">Using Data to Differentiate Instruction</a>	<a href="#">You're In Control: Alleviating Anxiety and Redirecting Defensive Behavior</a>	<b>Professionalism</b>
<a href="#">Session Evaluation</a>						
11:45am - 12:45pm	<b>Lunch</b>					
12:45pm - 2:00pm	<a href="#">EdTech Fight Club</a>	<a href="#">Schoolwide Positive Behavior Support</a>	<a href="#">Unlocking Academic Language: A Tiered Approach to Vocab Instruction</a>	<a href="#">Data Workshop: Assess, Post, Reflect, Achieve!</a>	<a href="#">Understanding Eligibilities</a>	<b>Meal Program</b>
<a href="#">Session Evaluation</a>						
2:20pm - 3:35pm	<a href="#">Intentional Instructional Structures: Stepping Up Your Room for Maximum Assessment Potential</a>	<a href="#">Schoolwide Positive Behavior Support</a>	<a href="#">Using SFA Strategies to Support EL Growth and Development</a>	<a href="#">Data Workshop: Assess, Post, Reflect, Achieve!</a>	<a href="#">Building Rapport to Build Success: Working with Behavioral Challenges and Motivational Deficits</a>	<b>Parent Involvement Compliance</b>
<a href="#">Session Evaluation</a>						
3:45pm - 4:00pm	<b>Closing Session and Raffle</b>					

We received great feedback from our teachers and staff; they enjoyed the professional, conference-style design of the day, the ability to choose sessions based on their own area of need, and the efforts from presenters to create meaningful sessions.

We will be replicating this professional development day on 11/7/16. Our goal on this day is to focus on meeting the needs of all students through a blended learning model. The session schedule is as follows:

8am - 8:15am	<b>Welcome and Logistics for the Day</b>			
8:15am - 9:10am	<b>Keynote Address: Blended Learning</b> <b>Jonathan Tiongco, Principal of Alliance College Ready Middle School</b>			
	<b>Room 2</b>	<b>Room 3</b>	<b>Room 4</b>	<b>Room 5</b>
9:15am-10:20am PBIS Sessions	<b>SWPBIS 1 (Duenas)</b>	<b>SWPBIS 2 (Takeyama/ Social Worker)</b>	<b>SWPBIS 3 (Castillo/Social Worker)</b>	
<a href="#">Session Evaluation</a>				
10:30am-11:45am Data/SPED Sessions	<b>Data Session 1: Classroom Data Sessions (Bradford)</b>	<b>Data Session 2: Grade Level Planning Time (Zepeda)</b>	<b>NCI Session (Nutt)</b>	<b>SPED Session 1 (Jaime/Ballard/Wakefield/Preston)</b>
<a href="#">Session Evaluation</a>				
11:45am - 12:45pm	<b>Lunch</b>			
12:45pm - 2:00pm Blended Learning and EL Support	<b>Blended Learning 1 (Bradford)</b>	<b>Blended Learning 2- Using MAPs data (Arce)</b>	<b>EL Support with SFA Strategies (Myers)</b>	<b>EL Session 2: EL Strategies (Letherer)</b>
<a href="#">Session Evaluation</a>				
2:20pm - 3:35pm Tuning Protocols	<b>Tuning Protocol 1: Rubrics (Myers)</b>	<b>Tuning Protocol 2: Unit Plan (Nutt or Bradford)</b>	<b>Tuning Protocol 3: Student Writing (Zepeda)</b>	<b>Tuning Protocol 4: Math Interventions (Bradford or Duran)</b>
<a href="#">Session Evaluation</a>				
3:45pm - 4:00pm	<b>Closing Session and Raffle</b>			

**Data Meetings/Goal Setting:**

As discussed in the section above, we are really pushing our data-driven culture again this year. Teachers are posting data in their classrooms about their students’ growth in ALEKS and on Achieve 3000 Lexile levels; they are posting pre-assessment results and post-assessment results, along with goals for upcoming units; they are sharing NWEA MAPs results and pushing our kids to improve on each benchmark.

Our next benchmark exam is during the week of 10/31/16. After our baseline test in August, teachers shared assessment results with students and set goals for improvement. Organizationally, our goals are as follows:

**MORCS ELA Data and Goals:**

All Grade Levels								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	134	40.48%	10% Growth: 104 students (31%) Met and Exceeded		10% Growth: 140 students (42%) Met and Exceeded		10% Growth: 176 students (53%) Met and Exceeded	
Nearly Met (Level 2)	129	38.97%						
Met (Level 3)	61	18.43%						
Exceeded (Level 4)	7	2.11%						
<b>Total # of Students</b>	331		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.	

6th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	45	41.67%	10% Growth: 27 students (25%) Met and Exceeded		10% Growth: 39 students (36%) Met and Exceeded		10% Growth: 51 students (47%) Met and Exceeded	
Nearly Met (Level 2)	48	44.44%						
Met (Level 3)	13	12.04%						
Exceeded (Level 4)	2	1.85%						
<b>Total # of Students</b>	108		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.	

7th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	43	36.75%	10% Growth: 42 students (40%) Met and Exceeded		10% Growth: 54 students (51%) Met and Exceeded		10% Growth: 66 students (63%) Met and Exceeded	
Nearly Met (Level 2)	44	37.61%						
Met (Level 3)	29	24.79%						
Exceeded (Level 4)	1	0.85%						
<b>Total # of Students</b>	117		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.	

8th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	46	43.40%	10% Growth: 35 students (33%) Met and Exceeded		10% Growth: 47 students (44%) Met and Exceeded		10% Growth: 59 students (56%) Met and Exceeded	
Nearly Met (Level 2)	37	34.91%						
Met (Level 3)	19	17.92%						
Exceeded (Level 4)	4	3.77%						
<b>Total # of Students</b>	106		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.		<b>How do we meet this goal?</b> 2-3 students per cohort need to move up to the met/exceeded levels.	

**MORCS Math Data and Goals:**

All Grade Levels								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	185	55.89%	10% Growth: students (%) Met and Exceeded		10% Growth: students (%) Met and Exceeded		10% Growth: students (%) Met and Exceeded	
Nearly Met (Level 2)	106	32.02%						
Met (Level 3)	30	9.06%						
Exceeded (Level 4)	10	3.02%						
Total # of Students	331		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

6th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	71	65.74%	10% Growth: 17 students (15%) Met and Exceeded		10% Growth: 29 students (27%) Met and Exceeded		10% Growth: 41 students (38%) Met and Exceeded	
Nearly Met (Level 2)	32	29.63%						
Met (Level 3)	5	4.63%						
Exceeded (Level 4)	0	0.00%						
Total # of Students	108		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

7th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
67	59	50.43%	10% Growth: 23 students (20%) Met and Exceeded		10% Growth: 35 students (30%) Met and Exceeded		10% Growth: 47 students (40%) Met and Exceeded	
29	47	40.17%						
9	9	7.69%						
4	2	1.71%						
109	117		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

8th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	55	51.89%	10% Growth: 36 students (34%) Met and Exceeded		10% Growth: 48 students (45%) Met and Exceeded		10% Growth: 60 students (57%) Met and Exceeded	
Nearly Met (Level 2)	27	25.47%						
Met (Level 3)	16	15.09%						
Exceeded (Level 4)	8	7.55%						
Total # of Students	106		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	



**BCCS ELA Data and Goals:**

All Grade Levels								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	149	43.70%	10% Growth: 98 students (~25%) Met and Exceeded		10% Growth: 137 students (~35%) Met and Exceeded		10% Growth: 176 students (~45%) Met and Exceeded	
Nearly Met (Level 2)	133	39.00%						
Met (Level 3)	57	16.72%						
Exceeded (Level 4)	2	0.59%						
<b>Total # of Students</b>	341		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.	

5th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	13	46.43%	10% Growth: 10 students (~35%) Met and Exceeded		10% Growth: 12 (~43%) students Met and Exceeded		10% Growth: 14 (~50%) students Met and Exceeded	
Nearly Met (Level 2)	7	25.00%						
Met (Level 3)	6	21.43%						
Exceeded (Level 4)	2	7.14%						
<b>Total # of Students</b>	28		<u>How do we meet this goal?</u> 2 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2 students per cohort need to move up to the met/exceeded levels.	

6th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	40	37.38%	10% Growth: 30 students (~26%) Met and Exceeded		10% Growth: 40 (~35%) students Met and Exceeded		10% Growth: 50 (~45%) students Met and Exceeded	
Nearly Met (Level 2)	47	43.93%						
Met (Level 3)	20	18.69%						
Exceeded (Level 4)	0	0.00%						
<b>Total # of Students</b>	107		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.	

7th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	52	53.06%	10% Growth: 25 students (~21%) Met and Exceeded		10% Growth: 37 (~31%) students Met and Exceeded		10% Growth: 49 (~41%) students Met and Exceeded	
Nearly Met (Level 2)	33	33.67%						
Met (Level 3)	13	13.27%						
Exceeded (Level 4)	0	0.00%						
<b>Total # of Students</b>	98		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.	

8th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	44	40.74%	10% Growth: 33 students (~28%) Met and Exceeded		10% Growth: 48 (~40%) students Met and Exceeded		10% Growth: 63 (~53%) students Met and Exceeded	
Nearly Met (Level 2)	46	42.59%						
Met (Level 3)	18	16.67%						
Exceeded (Level 4)	0	0.00%						
<b>Total # of Students</b>	108		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.		<u>How do we meet this goal?</u> 2-3 students per cohort need to move up to the met/exceeded levels.	

**BCCS Math Data and Goals:**

All Grade Levels								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	230	63.19%	10% Growth: 68 students (~18%) Met and Exceeded		10% Growth: 109 students (~29%) Met and Exceeded		10% Growth: 142 students (~39%) Met and Exceeded	
Nearly Met (Level 2)	108	29.67%						
Met (Level 3)	22	6.04%						
Exceeded (Level 4)	4	1.10%						
Total # of Students	364		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

5th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	20	71.43%	10% Growth: 6 students (~21%) Met and Exceeded		10% Growth: 8 students (~29%) Met and Exceeded		10% Growth: 10 students (~36%) Met and Exceeded	
Nearly Met (Level 2)	5	17.86%						
Met (Level 3)	3	10.71%						
Exceeded (Level 4)	0	0.00%						
Total # of Students	28		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2 students per cohort need to move up to the met/exceeded levels.	

6th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	72	63.16%	10% Growth: 16 students (~13%) Met and Exceeded		10% Growth: 28 students (~23%) Met and Exceeded		10% Growth: 40 students (~33%) Met and Exceeded	
Nearly Met (Level 2)	38	33.33%						
Met (Level 3)	4	3.51%						
Exceeded (Level 4)	0	0.00%						
Total # of Students	114		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

7th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
67	52	53.06%	10% Growth: 25 students (~21%) Met and Exceeded		10% Growth: 37 students (~31%) Met and Exceeded		10% Growth: 49 students (~41%) Met and Exceeded	
29	33	33.67%						
9	13	13.27%						
4	0	0.00%						
109	98		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

8th Grade								
	Fall MAPs Test		Winter MAPs Test		Spring MAPs Test		Summer MAPs Test	
	Baseline Actual Scores (August)		B1 GOAL (November)		B2 GOAL (February)		B3 GOAL (April)	
	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage	# of Students	Percentage
Did Not Meet (Level 1)	71	62.83%	10% Growth: 21 students (~18%) Met and Exceeded		10% Growth: 36 students (~30%) Met and Exceeded		10% Growth: 43 students (~36%) Met and Exceeded	
Nearly Met (Level 2)	36	31.86%						
Met (Level 3)	6	5.31%						
Exceeded (Level 4)	0	0.00%						
Total # of Students	113		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.		How do we meet this goal? 2-3 students per cohort need to move up to the met/exceeded levels.	

Our overall goal is that 50% of our students will be at a met/exceeded level by the end of the year. To meet this goal, we will have to grow by 10% each time we administer the NWEA MAPs test. Teachers have selected hotlist kids (kids on whom they will focus a bit more effort to ensure they progress to the next level. If teachers are able to move 2-3 students per cohort to the “met” level each time we take the MAPs assessment, we will be able to either hit our goal or come close to it in all content areas.



## CHIEF OPERATIONS OFFICER REPORT

October 24 2016

*The mission of the YPI Charter Schools (YPICS) is to prepare students for academic success in high school, as well as post--secondary education; prepare students to be responsible and active participants in their community; and enable students to become life-long learners. Students at YPI Charter Schools will become active citizens who characterize the ideals of a diverse and democratic society. Students will provide service to their community, take responsibility for their own learning, and develop the habits of mind and body that will empower them to be successful in high school and beyond.*

### **Central Office (YPICS Learning and Support Center)**

Central staff has moved into the new office space and our basic furniture setup has been installed. We are awaiting several pieces to be replaced as they were damaged upon delivery. The replacement is at no cost to YPICS. The new location will be called the **YPICS Learning and Support Center**. The location name clearly defines what the purpose of the location and that of the staff that is housed in the space.

### **Berendo/MORCS Gym Construction**

We continue working with the LAUSD staff on this project. The Gym Project requires an alteration to the MORCS project. The electrical yard will need additional capacity to support both projects. The District is currently asking us to fund the cost in our project. We are not planning on doing this. An agreement is still pending. We are exploring, monitoring, and breaking out the additional costs so that we can be reimbursed when necessary.

### **MORCS Construction**

The District has requested that we included the repair of Berendo's retaining wall that is falling down with the MORCS construction project. The damaged wall is located on on 11<sup>th</sup> street and connected to the same wall and space as the MORCS project. Inclusion of the additional project is beneficial to the MORCS construction project because our construction team will be able to manage and integrate the two projects together and reduce time and effort to complete both. We do not want to delay our project because of delays or complications with the retaining wall project. The District will fund the entire cost of the retaining wall project.

We will discuss the following during schedule board agenda items:

- bid process for selecting a contractor
- approval of a contractor for the project
- updated project budget and revenue sources

### **Climate Transformation Grant**

We have begun the new year for the Climate Transformation Grant. We are happy to inform you that both BCCS and MORCS have new fulltime social workers on site. Valinda Meneses is at BCCS and Gabrielle Aquino is at MORCS. They are both talented, hard working, and committed to helping our schools, families, students, and staff. They have already received significant praise from faculty and staff at both schools for their work.

Sergio Morales, the project director has chosen to leave YPI. His departure is a significant loss, but YPI staff has stepped in to provide support for the grant to move forward. The staff supporting the grant include Chief of Community Development Angelica Solis-Montero and Interim Project Director Shawn



**Bolten.**

We have completed our Tier I training and are beginning Tier II Trainings. Additionally, LAUSD Charter Option 3 Staff, YPICS staff and SCTG staff are training other Option 3 schools on implementing Tier I services. This effort is part of our process as we were trained as trainers. After completing this initial series, we will be supported by CALTAC PBIS as officially approved Tier I trainers.

# Coversheet

## Executive Director's Report

**Section:** II. COMMUNICATIONS  
**Item:** D. Executive Director's Report  
**Purpose:** FYI  
**Submitted by:**  
**Related Material:** YPICS Executive Director Report 102416 .pdf



## **YPI CHARTER SCHOOLS EXECUTIVE DIRECTOR'S REPORT**

**October 24, 2016**

*The mission of YPI Charter Schools (YPICS) is to:*

- *Prepare students for academic success in high school, as well as post-secondary education.*
- *Prepare students to be responsible and active participants in their community.*
- *Enable students to become life-long learners.*

*Students at YPICS will become active citizens who characterize the ideals of a diverse and democratic society. Students will provide service to their community, take responsibility for their own learning, and develop the habits of mind and body that will empower them to be successful in high school and beyond.*

### **CCSA:**

#### **AB 1198 (Dababneh) Vetoed by Governor Brown**

Governor Jerry Brown vetoed AB 1198 by Assemblymember Matt Dababneh. AB 1198 was CCSA's sponsored legislation to save charter schools thousands of dollars on facilities through the provision of more affordable financing rates. Citing fiscal concerns, the Governor vetoed AB 1198 and three other education bills. You can read the Governor's full veto message [here](#).

While the veto action is very disappointing, we remain committed to ensuring charter schools have equitable access to facilities in the next legislative session. We want to thank the more than 400 charter school supporters who advocated on behalf of charter students by writing to the Governor in support of AB 1198.

#### **SB 739 (Pavley) Vetoed by Governor**

Governor Brown vetoed SB 739 by Senator Fran Pavley. CCSA Opposed SB 739, which limited charter schools operating outside of district boundaries. In his veto message, the Governor wrote, "This bill attempts to address an issue, currently being reviewed by the State Auditor, whereby school districts authorize multiple charter schools outside of district boundaries to collect oversight fees. Let's review the audit when it's released next spring to better determine the scope of the issue and what, if any, policy changes are necessary." You can read the Governor's full veto message [here](#).

#### **California Awarded \$49 Million Charter School Program Grant**

The federal Department of Education (DOE) announced that the California Department of Education (CDE) was awarded \$49 million for the Public Charter School Grant Program (PCSGP) over the next three years. The PCSGP program provides start-up grants to charter developers to support the creation of high-quality charter schools and improve educational outcomes for students from high-need communities.

This is wonderful news for California's charter school sector as California was not selected as a grant recipient last year. Many thanks to the charter staff at the CDE and State Board of Education who worked to put together a highly competitive application this year. California is one of eight states to receive funding this year. In addition to the state grant, three California charter management organizations, Amethod, Equitas and KIPP, received direct start up awards from the DOE. CDE will release details on the application for these new funds in the coming months.

The funds will help to meet parent demand for high-quality charter schools across the state. Now is a great time to develop new and innovative charter school programs in communities across California!

### **National:**

#### ***From the National Alliance for Public Charter Schools -***

#### **Community Voices Concerned about NAACP Resolution Against Charter Schools Spur Action, Launch *ChartersWork* to Promote Equity and Choice for Black Students**

Parents with children in charter public schools, as well as those on waiting lists to get in, are speaking up for parental choice and the positive impact charter schools are having on Black student achievement across the nation. Led by the Black Alliance for Educational Options and the National Alliance for Public Charter Schools, the new *ChartersWork* campaign tells a clear and compelling story of why more than 700,000 Black families have chosen charter schools. The campaign formed in response to a growing number of voices from San Antonio to Washington, DC calling on the National Association for the Advancement of Colored People (NAACP) to reconsider the position it took in July to put a moratorium on charter schools.

The campaign is launching with a letter from more than 160 Black education and community leaders who are calling on the NAACP to reconsider and learn more about how charter schools are helping Black families.

Signees include Cheryl Brown Henderson, daughter of Oliver Brown, plaintiff in *Brown v. Board of Education*, and founding president and CEO of the Brown Foundation for Educational Equity, Excellence and Research; Geoffrey Canada, president of the Harlem Children's Zone; Mariama Carson, founder of Global Preparatory Academy Charter School and wife of Rep. Andre Carson (D-IN); Dr. Howard Fuller, founder and chair emeritus of Black Alliance for Educational Options; Dr. Michael Lomax, president of the United Negro College Fund; Bishop Reginald Jackson of the African Methodist Episcopal Church; Dr. Rod Paige, former US Secretary of Education; George Parker, former president of the Washington Teacher's Union; Dr. Steve Perry, founder and principal of Capital Preparatory Schools; and more.

Citing a shared understanding that Black students are getting a raw deal in America's schools, and are frequently underserved by the traditional public education system, the *ChartersWork* campaign is calling on the NAACP's national board to reconsider the organization's call for a moratorium and learn more.

"Over 60 years ago my father joined with numerous parents to stand with the NAACP and fight for all African American students stuck in a separate, broken education system. *Brown v. Board of Education* created better public education options for African American students, and made it the law of the land that neither skin color, socioeconomic status, nor geography should determine the quality of education a child receives," said **Cheryl Brown Henderson**, daughter of Oliver Brown, plaintiff in *Brown v. Board of Education* and founding president and CEO, Brown Foundation for Educational Equity, Excellence and Research. "I am eternally grateful to the NAACP for their leadership on this case and for giving

African American families the opportunity to send their children to the best schools that would help them to succeed. But I am troubled that in 2016, the NAACP would oppose placing better educational choices in the hands of families across the country. Charter public schools present African American families, especially those in low-income communities, with the choice to choose a public option that is best for their child. We must protect this choice."

Brown Henderson and other advocates are speaking out because charter schools are working for Black students. According to Stanford University's CREDO 2015 Urban Charter Schools Report on students in 41 urban regions across the country, low-income Black students attending charter schools gained 33 percent more learning in math and 24 percent more learning in reading each year as compared to their traditional public school peers.

"For generations, the NAACP has been at the forefront of the fight for political, educational, social and economic equality for Black Americans. This is why their resolution calling for a nationwide moratorium on charter schools, many of which serve the same Black families the NAACP is fighting to protect, is inexplicable," said **Jacqueline Cooper**, president of Black Alliance for Educational Options. "The truth is, banning new charter schools will only widen the achievement gap for low-income and working-class Black children by reducing the number of high-quality educational options available and increasing the number of names on existing waiting lists. As a result, there will yet again, be another generation of Black children who will not be prepared to go to, through and beyond college to become economically independent adults."

More than 20 years after the formation of the first charter school, there are now more than 6,800 charter schools across 43 states and the District of Columbia, educating nearly three million children. Black students account for 27 percent of charter school enrollment nationally, versus just 15 percent of traditional district school enrollment. And the number is growing. One in 10 Black students who attend a public school in this country attends a charter school. And many of the one million names on waiting lists to get into charter schools are Black children.

"The reality is that for too long, many traditional schools have been leaving Black students behind," said **Shirline Wilson**, a parent in Washington state whose third child to go through public schools has chosen a charter school. "Charter schools are meeting the needs of so many families like mine and providing real opportunities for kids who deserve equal access to a great education."

*ChartersWork* will run through the end of 2016 and focus on elevating Black voices and stakeholders from the civil rights and charter communities, dispelling myths and putting the focus of this conversation back on what works for children.

### **A Model Law for Supporting the Growth of High-Quality Charter Schools**

*A New Model Law for Supporting High-Quality Charter Public Schools: Second Edition* calls on state policymakers to strengthen the laws governing charter schools. In this revised version of the National Alliance's model charter school law, the policies outlined would increase the focus of state-level charter school laws on creating high-quality charter schools while holding underperforming schools and authorizers accountable.

This report draws on best practices in state policy that have led to the growth of high-quality charter schools, while also addressing weaknesses that, in some cases, have allowed underperforming charter schools and ineffective authorizers to avoid accountability. For example, the model law follows and builds on a report from earlier this year where the National Alliance called for reform of full-time virtual charter schools, too many of which significantly underperform.

The revised model law encourages states to provide more equitable support to charter school students, allow for more flexibility to charter schools, and strengthen accountability for charter schools and their authorizers. Specific revisions to the model law include policy updates on full-time virtual schools, funding, authorizers, facilities, flexibility, and discipline.

**State:**

***From School Services of California –***

**Bill Signing Update**

Governor Jerry Brown is gradually working through the nearly 800 bills that made it to his desk this year. So far he has had significant bill signings in the area of farmer worker overtime, climate change, construction oversight, and EpiPens. He also made the news cycle by vetoing tax changes for tampons and diapers.

But few education-related bills have been acted upon:

- Assembly Bill (AB) 2016 (Chapter 327/2016) requires the Instructional Quality Commission to develop, and the State Board of Education to adopt, modify, or revise a model curriculum in ethnic studies, and encourages each school district and charter school that maintains any of grades 9 to 12, inclusive, that does not otherwise offer a standards-based ethnic studies curriculum to offer a course of study in ethnic studies based on the model curriculum
- Senate Bill (SB) 1029 (Chapter 307/2016) imposes new reporting requirements to the California Debt and Investment Advisory Commission (CDIAC) by local educational agencies (LEAs) relating to state and local debt issuances, requiring LEAs to submit an annual report to CDIAC covering the period from July 1 to June 30 that includes debt authorized and outstanding during the reporting period, as specified, and the use of proceeds from the issuance of debt during the reporting period
- SB 1353 (Chapter 350/2016) addresses a drafting error in the California State Teachers' Retirement System full funding plan (AB 1469, Chapter 47/2014) that would have reduced the state's additional contribution
- SB 1455 (Chapter 312/2016) provides that a student meets residency requirements for school attendance if the student's parent is transferred or is pending transfer to a military installation that is within the boundaries of the school district

Many significant bills still remain on Governor Brown's desk, which include providing unemployment benefits to classified staff during the summer (AB 2197), providing 12 weeks of parental leave for classified staff (AB 2393), and changing the lease-leaseback process (AB 2316).

**Second Bill Signing Update**

Governor Jerry Brown and his staff were busy this weekend, acting on 161 bills since Friday afternoon. Of those 161 bills, 133 were signed and 28 were vetoed.

Below are some of the top education issues approved by Governor Brown in the past 72 hours:

- Assembly Bill (AB) 575 (Signed by the Governor) reestablishes a fee-supported process for the follow-up adoption of instructional materials until 2024.

- AB 1719 (Signed by the Governor) mandates that commencing in the 2018-19 school year, school districts and charter schools that require a health course for graduation include instruction in compression-only cardiopulmonary resuscitation (CPR).
- AB 1748 (Signed by the Governor) authorizes school nurses and other trained personnel to use naloxone hydrochloride or another opioid antagonist to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an opioid overdose.
- AB 2246 (Signed by the Governor) mandates the governing board of a local educational agency that serves pupils in grades 7 to 12 to, before the beginning of the 2017-18 school year, adopt, at a regularly scheduled meeting, a policy on pupil suicide prevention in grades 7 to 12, and requires the policy to address training to be provided to teachers regarding suicide awareness and prevention.
- AB 2316 (Signed by the Governor) eliminates the authority for school districts to issue a lease-leaseback contract without advertising for bid, establishes a competitive selections process for awarding lease-leaseback contracts, and allows a contractor to be paid reasonable costs furnished by the contractor if a lease-leaseback contract entered into prior to July 1, 2015, is found to be invalid by a court.
- Senate Bill (SB) 527 (Signed by the Governor) establishes the Learning Communities for School Success Program to implement the K-12 education portion of the Safe Neighborhoods and Schools Act (Proposition 47). This is a companion bill to AB 1014 (Chapter 397/2016), which also sets forth the criteria for the grant program.
- SB 1375 (Signed by the Governor) mandates, on or before July 1, 2017, all public schools, private schools that receive federal funds and are subject to the requirements of Title IX, school districts, county offices of education, and charter schools to post in a prominent and conspicuous location on their Internet websites specified information relating to Title IX.

While few bills are accompanied by signing messages, every veto is conveyed with a message to the Legislature explaining the Governor's rationale for not signing the bill. The most significant, though not unexpected, veto of an education bill this weekend was AB 2548 (Weber, D-San Diego). AB 2548 would have required the State Board of Education (Board) to adopt a statewide accountability system aligned to state and federal accountability requirements. In his veto message, the Governor stated:

The Board has spent more than two years listening to parents, students, teachers, school leaders, and the public in order to create a thoughtful and integrated federal, state, and local accountability system based on the Local Control Funding Formula. On September 8, 2016, the Board adopted the Local Control Funding Formula indicators which serve as the foundation of the new accountability system. The Board is committed to continuously improving the system and has an annual review process in place for just that reason. It is unnecessary and premature to impose additional requirements at this time.

As of September 23, 2016, 353 bills remain on the Governor's desk and must be acted on before midnight on Friday, September 30. Any bills not vetoed or signed by September 30 automatically become law.

Many significant bills still remain on Governor Brown's desk, which include requiring schools in areas of higher seismic activity to conduct an inspection of the contents of their buildings for earthquake safety (AB 1783), providing unemployment benefits to classified staff during the summer (AB 2197), and providing 12 weeks of parental leave for classified staff (AB 2393). Stay tuned.



### Third Bill Signing Update

After nearly nine months of watching hundreds of bills make their way through the legislative process, today at 11:59 p.m., marks the final day for Governor Jerry Brown to take action on the remaining stack of bills on his desk.

This year, more than 750 bills were passed by the Legislature and sent to Governor Brown. As of this posting, he had less than fifty left to consider whether to sign, veto, or allow to become law without taking any action. In the past two days, he has acted on over a dozen bills affecting K-12 education. As of this posting, we are still waiting word of his action on Assembly Bill (AB) 2393 (Campos, D-San Jose), which would provide 12 weeks of parental leave for K-12 and community college classified employees and clarify differential pay provisions for certificated school employees.

Below are his most recent actions. Unless the bill indicates it contains an “urgency clause,” it will become effective January 1, 2017.

#### Signed Bills

AB 1639 (Maienschein, R-San Diego) requires the California Department of Education (CDE) to develop guidelines regarding sudden cardiac arrest symptoms and warning signs for students and requires athletic coaches to complete a sudden cardiac arrest training course every two years. The bill becomes effective July 1, 2017. Beginning July 1, 2019, a coach that violates the training requirement is subject to suspension from coaching any athletic activity until it is completed.

AB 2329 (Bonilla, D-Concord) requires the State Superintendent of Public Instruction (SSPI) to convene, on or before September 1, 2017, a computer science strategic implementation advisory panel for the purpose of making recommendations for a computer science strategic implementation state plan.

SB 884 (Beall, D-San Jose) requires an audit procedure to be included in the annual K-12 audit guide to review whether state funding provided for educationally related mental health services was used by local educational agencies (LEA) for its “intended purpose” in the 2016-17 fiscal year.

SB 1072 (Mendoza, D-Artesia) requires by the 2018-19 school year, school buses and child care motor vehicles to be equipped with a “child safety alert system,” which is a device located at the interior rear of a bus requiring the driver to either manually contact or scan the device before exiting to assess whether any children are still on the bus. The bill provides exemptions for activity buses when certain conditions are met.

SB 1413 (Leno, D-San Francisco) allows school districts to dedicate school district-owned land to the development of affordable rental housing and restrict occupancy to teachers and school district employees.

#### Vetoed Bills

AB 491 (Gonzalez, D-San Diego) would have required LEAs to annually notify parents if their children are long term English learners (LTELs) or at risk of becoming LTELs, and required the CDE to develop a sample notification letter informing parents of their right to dispute the school districts' determinations of primary language.

AB 709 (Gipson, D-Carson) would have expressly stated that a charter school is subject to the Ralph M. Brown Act or Bagley-Keene Open Meeting Act, whichever is applicable; the California Public Records Act; and various other existing Conflict of Interest statutes.



AB 1783 (Dodd, D-Napa) would have required school districts, county offices of education (COEs), and charter schools with school buildings located in an area susceptible to seismic activity to inspect and secure building contents when those buildings are accessible to or occupied by students.

AB 2182 (Mullin, D-South San Francisco) would have established a school athletic neurocognitive testing pilot program to collect and maintain data on traumatic brain injuries and concussions sustained during sports activities.

AB 2197 (Garcia, D-Coachella) would have deleted the prohibition on the payment of unemployment benefits to classified education employees of a public school, other than teachers, researchers, and administrators, between two academic years. The bill would have phased in, starting in 2017, up to eight weeks of benefits available to those specified employees over a four-year time frame.

AB 2353 (McCarty, D-Sacramento) would have required CDE to identify professional development programs in culturally responsive instruction and to provide links to those programs on its website.

AB 2621 (Gomez, D-Los Angeles) would have required an LEA that maintains an employee code of conduct to provide a written copy of that document to the parent or guardian of each enrolled student at the beginning of each school year and to also post it on its website.

SB 123 (Liu, D-La Canada Flintridge) would have established a revised process for school-based and non-school-based administrative claiming, beginning January 1, 2018. The bill would have authorized the Department of Health Care Services (DHCS) to administer or oversee a single statewide quarterly random moment time survey and required the DHCS and CDE to enter into an interagency agreement or memorandum of understanding by July 1, 2018. The bill would have established a workgroup to provide advice on issues related to the delivery of school-based Medi-Cal services to students. The veto message can be found [here](#).

SB 739 (Pavley, D-Agoura Hills) would have prohibited school districts from authorizing new charter schools outside of their boundaries if the school district was assigned a negative certification. The veto message can be found [here](#).

SB 1113 (Beall, D-San Jose) would have authorized a county, or a qualified provider operating as part of the county mental health plan network, and an LEA to enter into a partnership for the provision of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) mental health services.

### **Final Bill Signing**

Meeting his September 30, 2016, deadline, Governor Jerry Brown completed action on more than 1,300 bills for the 2016 legislative year, signing 1,161 and vetoing 159, or nearly 14% of those that made it to his desk.

We have sorted the bills we have been following this year into those that were signed by Governor Brown and those that were vetoed. All bills vetoed by Governor Brown include a veto message, providing his rationale behind returning the bill to the Legislature without his signature. They are often an interesting read—and provide direction on how a bill can be more successful in a future legislative attempt.

This issue of Top Legislative Issues will be the last for the year and will return to production in January 2017.

## Signed by the Governor

**Assembly Bill (AB) 575 (Chapter 550/2016)—Instructional Materials: Followup Adoptions.** This bill reestablishes a fee-supported process for the follow-up adoption of instructional materials until 2024.

**AB 1014 (Chapter 397/2016)—Education Finance: Safe Neighborhoods and Schools Fund: Learning Communities for School Success Program.** This bill establishes the Learning Communities for School Success Program, which requires the California Department of Education (CDE) to administer grants from Proposition 47 funds to improve outcomes for students by reducing truancy and supporting students who are at risk of dropping out of school or are victims of crime. Local educational agencies (LEAs) would apply for grants to provide assistance in identifying and implementing evidence-based, non-punitive programs and practices that are aligned with the student goals contained in the LEA’s Local Control and Accountability Plan. The CDE would develop the grant application and the bill prioritizes funding to LEAs that have a high rate of chronic absenteeism or located in a high crime rate area, and/or has a high population of foster youth.

The grant application would be for three years of funding, but grantees would need to meet requirements at the end of the first and second years in order to receive funding for the remaining grant period. LEAs that receive grant funding will be required to evaluate and report the results of the activities it undertakes with the grant funds.

**SSC Comment:** The 2016-17 State Budget includes \$10 million to fund these grants.

**AB 1557 (Chapter 764/2016)—School Facilities: Use By Nonprofit Youth Organizations: Recreational Youth Sports Leagues.** This bill will specifically authorize a governing board of a school district to authorize the use of school facilities or grounds by a nonprofit organization, or by a club or an association organized to promote youth and school activities, that is a recreational youth sports league that charges participants an average of no more than \$60 per month.

**AB 1676 (Chapter 856/2016)—Employers: Wage Discrimination.** This bill specifies that prior salary cannot, by itself, justify any disparity in compensation between men and women.

**AB 1719 (Chapter 556/2016)—Pupil Instruction: Cardiopulmonary Resuscitation.** This bill mandates that commencing in the 2018-19 school year, school districts and charter schools that require a health course for graduation include instruction in compression-only cardiopulmonary resuscitation.

**AB 2016 (Chapter 327/2016)—Pupil Instruction: Ethnic Studies.** This bill requires the Instructional Quality Commission to develop, and the State Board of Education (SBE) to adopt, modify, or revise a model curriculum in ethnic studies, and encourages each school district and charter school that maintains any of grades 9 to 12, inclusive, that does not otherwise offer a standards-based ethnic studies curriculum to offer a course of study in ethnic studies based on the model curriculum.

**AB 2116 (Chapter 129/2016)—School Bonds: Projections of Assessed Property Valuations.** AB 2116 requires that before school and community college districts order a local bond election they shall obtain “reasonable and informed projections of assessed property valuation” that include projections made by a county assessor.

**AB 2316 (Chapter 521/2106)—School Facilities: Leasing Property.** This bill eliminates the authority for school districts to issue a lease-leaseback contract without advertising for bid, establishes a competitive selections process for awarding lease-leaseback contracts, and allows a contractor to be paid

*YPICS Agenda – October 24, 2016*

reasonable costs furnished by the contractor if a lease-leaseback contract entered into prior to July 1, 2015, is found to be invalid by a court.

**AB 2393 (Chapter 882/2016)—School Employees: Sick Leave: Parental Leave.** Existing state law establishes California Family Rights Act, which requires employers to grant employees up to 12 weeks of unpaid protected leave, in any 12-month period, to care for a seriously ill spouse, child or parent, or for their own serious medical condition, which includes the birth of a child or parental bonding.

This bill requires K-14 classified school employees on maternity or paternity leave to receive differential pay for up to 12 workweeks of unpaid and protected family and medical leave.

**AB 2537 (Chapter 106/2016) Pupils: School Attendance: Residency Requirements.** AB 2537 eliminates the existing July 1, 2017, sunset of the provisions of the Education Code authorizing a pupil to enroll in a school district where at least one of the parents or legal guardians of the pupil is physically employed within the boundaries of that school district for a minimum of ten hours during the school week. During the period of enrollment the parent or legal guardian of the pupil must continue to be physically employed by an employer situated within the attendance boundaries of the school district.

**AB 2615 (Chapter 470/2016)—After School Programs.** This bill authorizes a school program participating in the 21st Century High School After School Safety and Enrichment for Teens program to charge family fees; authorizes the CDE to withhold or terminate grant allocations that do not comply with specified CDE required reporting requirements; and, allows participating school programs to transfer program services to another school site within the same local educational agency under specified circumstances.

Existing law establishes the After School Education and Safety Program (ASES) to serve pupils in kindergarten and grades 1 to 9, inclusive, at participating public elementary, middle, junior high, and charter schools. This bill would, among other things, specify that grades to be served by participating school programs may be determined by local needs; require participating school programs that charge family fees to waive or reduce the cost of these fees for pupils who are eligible for free or reduced-price meals; and, state the intent of the Legislature that participating middle school or junior high school pupils participate in the full day of the program every day during which pupils participate.

Existing law states the intent of the Legislature that the 21st Century Community Learning Centers (21st CCLC) program contained within a specified federal act complement ASES. Existing law requires at least 40% of the total amount appropriated pursuant to the 21st CCLC program, except as specified, to be allocated to programs serving elementary and middle school pupils and at least 50% of the total amount appropriated, except as specified, to be allocated on a priority basis for after school grants to community learning centers serving high school pupils. This bill would require the CDE to allocate those funds to each geographic region of the state, as specified.

**AB 2656 (Chapter 697/2016)—Pupils: Diploma Alternatives: Fee Waiver: Foster Youth.** This bill extends to foster youth the fee waivers for the California High School Proficiency Exam and the high school equivalency exam that are currently provided to students who are homeless.

**AB 2738 (Chapter 472/2016)—School Bonds: Local School Bonds: Investment.** AB 2738 prohibits school or community college districts from withdrawing proceeds issued by the county for purposes of making investments outside the county treasury.

**AB 2815 (Chapter 829/2016)—Pupil Attendance: Supervisors of Attendance.** The bill deletes the requirement that a county board of education approve a contract between a school district and the county superintendent of schools for the supervision of attendance of pupils in the school district.

**Senate Bill (SB) 884 (Chapter 835/2016)—Special Education: Mental Health Services.** This bill requires an audit procedure to be included in the annual K-12 audit guide to review whether state funding provided for educationally related mental health services was used by LEA for its “intended purpose” in the 2016-17 fiscal year.

**SB 1029 (Chapter 307/2016)—California Debt and Investment Advisory Commission: Accountability Reports.** This bill imposes new reporting requirements to the California Debt and Investment Advisory Commission (CDIAC) by LEAs relating to state and local debt issuances, requiring LEAs to submit an annual report to CDIAC covering the period from July 1 to June 30 that includes debt authorized and outstanding during the reporting period, as specified, and the use of proceeds from the issuance of debt during the reporting period.

**SB 1072 (Chapter 721/2016)—School bus Safety: Child Safety Alert System.** This bill requires by the 2018-19 school year, school buses and child care motor vehicles to be equipped with a “child safety alert system,” which is a device located at the interior rear of a bus requiring the driver to either manually contact or scan the device before exiting to assess whether any children are still on the bus. The bill provides exemptions for activity buses when certain conditions are met.

**SB 1413 (Chapter 732/2016)—School Districts: Employee Housing.** This bill establishes the Teacher Housing Act of 2016 and provides that a school district may establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing.

The bill creates a state policy supporting housing for teachers and school district employees, pursuant to the IRS code, and permits school districts and developers in receipt of local or state funds designated for affordable rental housing to restrict occupancy to teachers and school district employees on land owned by school districts, so long as that housing does not violate any other applicable laws.

**SB 1455 (Chapter 312/2016)—Pupil Enrollment: Military Dependents.** This bill allows school districts to dedicate school district-owned land to the development of affordable rental housing and restrict occupancy to teachers and school district employees.

### **Vetoed by the Governor**

**AB 491 (Gonzalez, D-San Diego)—English Learners: Identification Notice.** This bill would have required LEAs to annually notify parents if their children are long-term English learners (LTELs) or at risk of becoming LTELs, and required the CDE to develop a sample notification letter informing parents of their right to dispute the school districts’ determinations of primary language.

*The Governor’s veto message states in part:*

*“This bill would, among other things, require school districts to provide parents, at the time of enrolling their student, information explaining how their responses to a home language survey may lead to their student being designated as an English learner. Given that English learners constitute approximately one-fourth of students enrolled in California public schools, I agree that we need to do a better job explaining to parents how their student may be designated as an English learner and what happens once*

*they receive this designation. The specific statements included in this bill, however, are not clear and will cause more confusion for parents, not less. This is an important matter that we have to get right.”*

**AB 1783 (Dodd, D-Napa)—School Facilities: Nonstructural Earthquake Hazards: Inspection.** This bill would have required school districts, county offices of education, and charter schools with school buildings located in an area susceptible to seismic activity to inspect and secure building contents when those buildings are accessible to or occupied by students.

*The Governor’s veto message states in part:*

*“I am returning the following four bills without my signature: Assembly Bill 1198 Assembly Bill 1783 Assembly Bill 2182 Senate Bill 1113. Each of these bills creates unfunded new programs. Despite significant funding increases for local educational agencies over the past few years, the Local Control Funding Formula remains only 96 percent funded. Given the precarious balance of the state budget, establishing new programs with the expectation of funding in the future is counterproductive to the Administration’s efforts to sustain a balanced budget and to fully fund the Local Control Funding Formula. Additional spending to support new programs must be considered in the annual budget process.”*

**AB 1878 (Jones-Sawyer, D-Los Angeles)—Public Employees’ Retirement System: State or School Members: Postretirement Death Benefit.** Existing law requires that, upon the death of any state or school member after retirement and while receiving a retirement allowance, the sum of \$2,000 be paid to the member’s designated beneficiary. This bill would have authorized the Board of Administration of the California Public Employees’ Retirement System to annually adjust the lump-sum death benefit for state and school members, based on changes in the All Urban California Consumer Price Index.

*The Governor’s veto message states in part:*

*“This bill authorizes the California Public Employees’ Retirement System Board to increase the lump-sum post-retirement death benefit for state and school members based on inflation. Given the state’s huge unfunded pension liabilities, I don’t believe it is prudent to add the additional costs that this bill would require.”*

**AB 2197 (Garcia, Cristina, D-Bell Gardens)—Unemployment Insurance: Classified Employees.** This bill would have deleted the prohibition on the payment of unemployment benefits to classified education employees of a public school, other than teachers, researchers, and administrators, between two academic years. The bill would have phased in, starting in 2017, up to eight weeks of benefits available to those specified employees over a four-year time frame.

*The Governor’s veto message states in part:*

*“This bill allows classified school employees to collect unemployment insurance benefits between school years. This bill creates several conformity issues with the federal Unemployment Insurance laws, which could result in sanctions from the federal government, including the loss of significant tax credits for California’s employers.”*

**AB 2548 (Weber, D-San Diego)—School Accountability: Statewide Accountability System.** This bill would have required the SBE to do the following in an effort to design and build a coherent and aligned local, state, and federal accountability system, including:



- Establishing clear and ambitious statewide performance standards and expectations for improvement among a set of indicators that shall be differentiated by pupil subgroup
- Establishing a mechanism to meaningfully differentiate school-level performance annually
- Establishing multiple levels of performance for purposes of continuous improvement and the provision of support, including the identification of the lowest 5% of Title 1 schools and schools where any pupil subgroup consistently under-performs or where any one pupil subgroup would on its own cause the school to be among the lowest 5% of lowest performing schools

The bill would have required the inclusion of a pupil achievement measure in English language arts, mathematics, and science (an academic measure for the K-8 grade span and graduation rates for the high school grade span), rates of English proficiency, chronic absenteeism, and school climate.

*The Governor's veto message states in part:*

*"This bill would impose new requirements for the public school accountability system that the State Board of Education has already developed. The Board has spent more than two years listening to parents, students, teachers, school leaders and the public in order to create a thoughtful and integrated federal, state and local accountability system based on the Local Control Funding Formula. On September 8, 2016, the Board adopted the Local Control Funding Formula indicators which serve as the foundation of the new accountability system. The Board is committed to continuously improving the system and has an annual review process in place for just that reason. It is unnecessary and premature to impose additional requirements at this time."*

**AB 2826 (Weber)—Teachers: Evaluation and Assessment.** Existing law, known as the Stull Act, requires school districts to evaluate teacher performance on a periodic basis as it relates to the following:

- 1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.
- 2) The instructional techniques and strategies used by the employee.
- 3) The employee's adherence to curricular objectives.
- 4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

This bill would have specified measures of pupil progress, instructional techniques and strategies, and adherence to curricular objectives that school districts may use for purposes of teacher evaluation.

### **Legislative Analyst's Office Examines Impacts of Proposition 13**

The Legislative Analyst's Office (LAO), the Legislature's nonpartisan fiscal advisor, has issued a report that examines the long-term impacts of Proposition 13, the landmark measure which sparked a nationwide taxpayer revolt.

Passed by state voters in 1978, Proposition 13 limited California's local property tax rate to 1% and limited the growth in assessed valuation to 2% annually. As a result, property tax owners saw an immediate reduction in their property tax payments, but at the same time, local governments experienced a 60% drop in property tax revenues from about \$42 billion before 1978 to about \$18

*YPICS Agenda – October 24, 2016*

billion following implementation of Proposition 13. The LAO report concludes that property taxes remain a foundation of public finance in California, raising about \$55 billion annually, second only to the personal income tax.

Below are some of the key questions about Proposition 13 asked and answered by the LAO:

- *What Happened to Local Government Revenues After Proposition 98?* Tax revenue per person for cities and counties has declined since Proposition 13, falling from \$790 per person in 1977-78 to \$640 per person in 2014-15, adjusted for inflation. However, this reduction has been offset by increases in fees and assessments.
- *Do Proposition 13's Benefits for Property Owners Vary with Income?* Tax relief from Proposition 13 is generally proportionate to the market value of homes; therefore, higher-income homeowners, who own more homes and homes of higher value, receive a larger share of tax relief.
- *Does Proposition 13 Reduce Property Turnover?* Yes. Property turnover has slowed since 1978, with many factors driving this trend, including the state's aging population, rising real estate prices, and Proposition 13.
- *Did Proposition 13 Cause Residential Properties to Pay a Larger Share of Property Taxes?* No. While homeowners do pay a slightly larger share of property taxes today than prior to the passage of Proposition 13, the measure does not appear to have caused this increase. Instead, faster growth in the number of residential properties, up 60% since 1978, compared to commercial and industrial properties, up 30%, explains this shift in the property tax payments toward residential properties.
- *Did Proposition 13 Increase Fees on Developers?* Yes. Local governments appear to be increasingly using fees—parcel taxes, impact fees, and Mello-Roos assessments—to pay for the costs associated with new development. Over half of the states in the nation impose impact fees, with California having fees that are almost three times as high as the national average of the states surveyed.
- *Did Assessments Associated with Development Rise After Proposition 13?* Yes. Local governments increasingly use Mello-Roos assessments to pay for infrastructure—including schools—associated with new development. Since 1990—five years after Mello-Roos assessments were enacted—the amount per residential building permit has increased over 130%.

The LAO's 51-page report addresses other questions about the effects of Proposition 13, including land use decisions, homeownership rates, new business creation, and other important public policy issues.

#### **Fourth and Final Bill Actions: Parental Leave for Classified Employees Signed by Governor**

In his final legislative update issued on September 30, 2016, Governor Jerry Brown announced his signature on Assembly Bill (AB) 2393 (Campos, D-San Jose), which will provide 12 weeks of parental leave for K-12 and community college classified employees as well as community college certificated employees.

This is a follow-up to the passage of AB 375 (Chapter 400/2015) last year, which granted K-12 certificated employees this benefit. Specifically, current law requires K-12 employers to grant certificated employees up to 12 weeks of leave for the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee. The 12-week period is reduced by sick leave taken for parental leave and provides for the use of substitute differential pay for up to the balance of the 12 weeks. The employee is not required to have 1,250 hours of service with the employer during the previous 12-month period in order to take parental leave.

AB 2393 not only extends this benefit to the rest of the K-14 classified and certificated employees, but clarifies current law by specifying that for either differential pay system that the school or community college district is using—substitute differential pay or 50% differential pay—an employee on parental leave who has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent shall be compensated according to the differential pay system in use for the remaining portion of the 12-week period.

**Additionally, in his final actions, the Governor signed:**

Senate Bill (SB) 1406 (Chapter 892/2016), which requires an attorney who provides a prelitigation letter or sends or serves a complaint alleging a construction-related accessibility claim against an education entity to send a copy of the prelitigation letter or complaint to the California Commission on Disability Access (CCDA) within five business days. The bill requires the attorney to submit certain information about the complaint and to submit the notification of judgment, settlement, or dismissal to the CCDA. This bill subjects an attorney who fails to comply with these requirements to discipline.

**Finally, the Governor vetoed:**

AB 2826 (Weber, D-San Diego), which would have made various changes to the Stull Act, by adding new measures of pupil progress, instructional techniques and strategies, and adherence to curricular objectives that school districts could use for purposes of teacher evaluation. The Governor’s veto message was short, stating, “This bill sets forth 20 separate measures that school districts may voluntarily use for teacher evaluation. I don’t believe that this list of particular measures will materially change current teacher evaluations in California.”

**Poll Finds Concern for Tax Extension and Facilities Bond Approval**

On Thursday, September 22, 2016, with fewer than seven weeks to go until the 2016 November election, the Public Policy Institute of California released its latest *Californians and Their Government Survey*. The survey shows that 54% of likely voters support Proposition 55, the effort to extend the income tax portion of Proposition 30. More than three out of four Democrats support the tax extension as well as one-third of Republicans and half of Independent voters.

In May (see “Latest Poll Shows Support for Extending Proposition 30” in the June 3, 2016, *Fiscal Report*), 58% of likely voters supported the Proposition 30 extension. This latest poll shows a drop in support for the proposition despite the lack of an active opposition campaign.

Back in 2012, when Proposition 30 was on the ballot, poll after poll showed support for the measure sliding lower and lower (see “Downward Slide for Proposition 30 Continues” in the October 26, 2012, *Fiscal Report*). As Election Day approached, however, Governor Jerry Brown began actively campaigning for his temporary tax measure, and Proposition 30 passed with 55.4% of the vote.

It is unclear whether Governor Brown will be involved in Proposition 55’s campaign. He has not endorsed the proposal and is more actively engaged in getting his juvenile justice initiative passed (Proposition 57) and in defeating Proposition 53, which would require voter approval of revenue bonds and could jeopardize building the high-speed rail and the twin tunnels project for water conveyance.

Proposition 51 appears to be in worse shape than Proposition 55 with fewer than half of likely voters supporting the \$9 billion education facilities bond (47% in support versus 43% opposed). With opposition from Governor Brown and no support from the statewide teachers’ groups, the campaign for



school facilities funding is having a rough time keeping voters supporting the bond. In April, 63% of likely voters supported Proposition 51.

The last statewide school bond, Proposition 1D from 2006, was approved with 56.9% of the vote and that was with support from teachers' groups as well as the two candidates for Governor that year, Arnold Schwarzenegger and Phil Angelides.

### **Proposition 55**

All of us at School Services of California, Inc., strive for precision in our descriptions of various legislative and budget outcomes, but sometimes the details get in the way of the main message. Such is the case with explanations of the benefits of Proposition 55, an initiative that would extend the current temporary income taxes through 2030 instead of allowing them to expire at the end of 2018.

We know that over that long period an additional \$4 billion to \$9 billion per year in state revenues will benefit Proposition 98 and will serve to elevate revenues for schools above where they would be without extension of the taxes. Proposition 55 is a good thing for public education over the long haul.

We continue to get questions about things no one can know at this point, like, "How much more will my district get in 2019 if the taxes are extended?" Or, "Will the extension guarantee that in every year, under a wide variety of economic circumstances, Proposition 98 will increase?" The answers to these questions are a bit elusive given the vagaries of the economy and the fact that Local Control Funding Formula funding is determined by the Legislature each year based upon facts that are specific to that year. However, just as we cannot be precise about how many years will be added to your life if you stop smoking, the benefits of Proposition 55, while not precisely specified year by year, are real and have the potential to dramatically improve funding for schools for years to come.

Our main message here is that Proposition 55 is a good thing for schools, we urge readers not to allow the leaves to block the view of the forest; the green in those trees is from the dollars education will receive if Proposition 55 passes.

*From California Association of School Business Officials (CASBO) –*

#### **Statewide Propositions for November Election**

*By Sara C. Bachez and Elizabeth Munguia, Governmental Relations*

The initiative process empowers voters in California to determine whether to enact changes to the state Constitution or other laws, with a simple majority of the vote to pass. Since 2000, California voters have considered a total of 140 propositions, with just over half of those being approved. For the 2016 November elections, voters will have to decide on 17 statewide ballot propositions.

#### **Proposition 51: School Bonds. Funding for K-12 School and Community College Facilities. (Initiative Statutory Amendment)**

This initiative authorizes \$9 billion in general obligation bonds for new construction and modernization of K–12 public school facilities; charter schools and vocational education facilities; and California Community Colleges facilities.

**Fiscal Impact:** The estimated state cost of the facilities bond initiative is about \$17.6 billion to pay off both the principal (\$9 billion) and interest (\$8.6 billion) on the bond.

**Polling:** 62% of likely voters would vote to “support” Proposition 51, while 35% of likely voters would “oppose” and 2% of likely voters were undecided. (*Source:* Public Policy Institute of California, April 2016).

**CASBO Position:** Support

**If passed, Proposition 51 will:**

- Fund projects on the true unfunded
- Fund eligible modernization projects on the acknowledged list.
- Fund eligible new construction projects on the acknowledged list.
- Fund approved Community College projects.
- Fund eligible career technical education facilities and eligible charter school facilities.

**Proposition 52: State Fees on Hospitals. Federal Medi-Cal Matching Funds. (Initiative Statutory and Constitutional Amendment)**

This initiative extends indefinitely an existing statute that imposes fees on hospitals to fund Medi-Cal health care services, care for uninsured patients, and children’s health coverage.

**Fiscal Impact:** Uncertain fiscal effect, ranging from relatively little impact to annual state General Fund savings of around \$1 billion and increased funding for public hospitals in the low hundreds of millions of dollars annually.

**Polling:** No polling data available at time of publication.

**Proposition 53: Revenue Bonds. (Initiative Constitutional Amendment)**

This initiative requires statewide voter approval before any revenue bonds can be issued or sold by the state for certain projects if the bond amount exceeds \$2 billion.

**Fiscal Impact:** State and local fiscal effects are unknown and would depend on which projects are affected by the measure and what actions government agencies and voters take in response to the measure’s voting requirement.

**Polling:** 70% of respondents would “support” Proposition 53, while 22% would “oppose” and 8% were undecided. (*Source:* Public Policy Institute of California, January 2016)

**Proposition 54: Legislature. Legislation and Proceedings. (Initiative Constitutional Amendment and Statute)**

This initiative prohibits Legislature from passing any bill unless published on Internet for 72 hours before vote. Requires Legislature to record its proceedings and post on Internet. Authorizes use of recordings.

**Fiscal Impact:** One-time cost of \$1 million to \$2 million and ongoing cost of about \$1 million annually to record legislative meetings and make videos of those meetings available on the Internet.

**Polling:** No polling data available at time of publication.

**Proposition 55: Tax Extension to Fund Education and Healthcare. (Initiative Constitutional Amendment)**

This initiative extends the temporary personal income tax increases enacted in 2012 on earnings over \$250,000 for single filers and over \$500,000 for joint filers, for an additional twelve years. The state revenues will continue to support K-12 public schools and community colleges, and allocates up to \$2 billion per year for healthcare programs dedicated to low-income families and senior citizens. The initiative bars use of education revenue for administrative costs, but provides local school governing boards discretion to decide how revenues are to be spent in open meetings that are subject to annual audit.

**Fiscal Impact:** Increased state revenues—\$8 billion to \$11 billion annually from 2019–2030—depending on the economy and stock market. The increased funding is dedicated for schools, community colleges, health care for low-income people, budget reserves, and debt payments.

**Polling:** 57% of respondents would be in “support” of Proposition 55, while 35% are “opposed” and 8% have no answer. The support dropped from 62% based on the Public Policy Institute of California survey conducted in April. (*Source:* USC Dornsife/*Los Angeles Times*, September, 2016)

**CASBO Position:** Support

**If passed Proposition 55 will:**

- Generate an estimated \$8-11 billion per year on average.
- Prevent nearly \$4 billion in funding cuts for public education.
- Put new revenue into the Education Protection Account, to make sure the money goes to local schools and community colleges.
- Give control to local school boards to determine student needs.

**Proposition 56: Cigarette Tax to Fund Healthcare, Tobacco Use Prevention, Research, and Law Enforcement. (Initiative Constitutional Amendment and Statute)**

This initiative increases cigarette tax by \$2.00 per pack, with equivalent increase on other tobacco products and electronic cigarettes containing nicotine. Excludes these revenues from Proposition 98 funding requirements. If tax causes decreased tobacco consumption, transfers tax revenues to offset decreases to existing tobacco-funded programs and sales tax revenues. Requires biennial audit.

**Fiscal Impact:** Additional net state revenue of \$1 billion to \$1.4 billion in 2017–18, with potentially lower revenues in future years. Revenues would be used primarily to augment spending on health care for low-income Californians.

**Polling:** 60% of respondents would “support” Proposition 56, while 33% would vote “no” and 7% were undecided. (*Source:* SurveyUSA, September 2016)

**Proposition 57: Criminal Sentences. Juvenile Criminal Proceedings and Sentencing. (Initiative Constitutional Amendment and Statute)**

This initiative allows parole consideration for persons convicted of nonviolent felonies upon completion of full prison term for primary offense, as defined. Authorizes sentence credits for rehabilitation, good behavior, or educational achievements. Provides juvenile court judge decides whether juvenile will be prosecuted as adult.

**Fiscal Impact:** Net state savings likely in the tens of millions of dollars annually, depending on implementation. Net county costs of likely a few million dollars annually.

**Polling:** 66% of respondents would vote “yes” on Proposition 57, while 26% would vote “no” and 8% did not provide an answer. (*Source: USC Dornsife/Los Angeles Times, September 2016*)

**Proposition 58 (SB 1174, Lara): English Proficiency. Multilingual Education. (Initiative Statute)**

This initiative preserves requirement that public schools ensure students obtain English language proficiency, but allows schools to use multiple programs, including bilingual education to meet student needs. The initiative requires school districts to solicit parent/community input in developing language acquisition programs and authorizes school districts to establish dual-language immersion programs for both native and non-native English speakers.

**Fiscal Impact:** No notable fiscal effect on school districts or state government.

**Polling:** No polling data available at time of publication.

**Proposition 59 (SB 254, Allen): Corporations. Political Spending. Federal Constitutional Protections. (Legislative Advisory Question)**

This initiative asks whether California’s elected officials should use their authority to propose and ratify an amendment to the federal Constitution overturning the United States Supreme Court decision in Citizens United vs. Federal Election Commission. Citizens United ruled that laws placing certain limits on political spending by corporations and unions are unconstitutional.

**Fiscal Impact:** No direct fiscal effect on state or local governments.

**Polling:** No polling data available at time of publication.

**Proposition 60: Adult Films. Condoms. Health Requirements. (Initiative Statute)**

This initiative requires performers in adult films to use condoms during filming of sexual intercourse. Requires producers of adult films to pay for performer vaccinations, testing, and medical examinations related to sexually transmitted infections. Requires producers to obtain state health license at beginning of filming and to post condom requirement at film sites.

**Fiscal Impact:** Likely reduction of state and local tax revenues of several million dollars annually. Increased state spending that could exceed \$1 million annually on regulation, may offset by new fees.

**Polling:** 55% of respondents would “support” Proposition 60, while 32% would “oppose” and 13% were undecided. (*Source: USC Dornsife/Los Angeles Times, September 2016*)

**Proposition 61: State Prescription Drug Purchases. Pricing Standards. (Initiative Statute)**

This initiative prohibits state from buying any prescription drug from a drug manufacturer at price over lowest price paid for the drug by United States Department of Veterans Affairs. Exempts managed care programs through Medi-Cal.

**Fiscal Impact:** Potential for state savings of an unknown amount depending on (1) how the measure’s implementation challenges are addressed and (2) the responses of drug manufacturers regarding the provision and pricing of their drugs.

**Polling:** 66% of respondents would vote “yes” on Proposition 61 while 23% of respondents would vote “no” and 12% stated they were undecided. (*Source:* USC Dornsife/Los Angeles Times, September 2016)

### **Proposition 62: Death Penalty. (Initiative Statute)**

This initiative repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole. Applies retroactively to persons already sentenced to death. States that persons found guilty of murder and sentenced to life without possibility of parole must work while in prison as prescribed by the Department of Corrections and Rehabilitation. Increases to 60% the portion of wages earned by persons sentenced to life without the possibility of parole that may be applied to any victim restitution fines or orders against them.

**Fiscal Impact:** Net ongoing reduction in state and county criminal justice costs of around \$150 million annually within a few years, although the impact could vary by tens of millions of dollars depending on various factors.

**Polling:** 36% of likely voters would “support” Proposition 62, while 52% of likely voters would vote “no” and 12% were undecided. (*Source:* SurveyUSA, September 2016)

### **Proposition 63: Firearms. Ammunition Sales. (Initiative Statute)**

This initiative requires background check and Department of Justice authorization to purchase ammunition. Prohibits possession of large capacity magazines.

**Fiscal Impact:** Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.

**Polling:** 64% of likely voters would vote “yes” on Proposition 63, while 28% said they would vote “no” and 8% had no answer. (*Source:* USC Dornsife/Los Angeles Times, September 2016)

### **Proposition 64: Marijuana Legalization. (Initiative Statute)**

This initiative legalizes marijuana and hemp under state law. Designates state agencies to license and regulate marijuana industry. Imposes state excise tax on retail sales of marijuana equal to 15% of sales price, and state cultivation taxes on marijuana of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves. Exempts medical marijuana from some taxation. Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products. Allows local regulation and taxation of marijuana. Prohibits marketing and advertising marijuana to minors. Authorizes resentencing and destruction of records for prior marijuana convictions.

**Fiscal Impact:** The fiscal statement prepared jointly by the Legislative Analyst and the Director of the Department of Finance stated the following: *the size of the measure’s fiscal effects could vary significantly depending on:*

- (1) how state and local governments choose to regulate and tax marijuana,
  - (2) whether the federal government enforces federal laws prohibiting marijuana, and
  - (3) how marijuana prices and consumption change under the measure
- Net additional state and local tax revenues that could eventually range from the high hundreds of millions of dollars to over \$1 billion annually. Most of these funds would be required to be spent for specific purposes such as youth programs, environmental protection, and law enforcement.
  - Net reduced costs potentially in the tens of millions of dollars annually to state and local governments primarily related to a decline in the number of marijuana offenders held in state prisons and county jails.

**Polling:** About 4 different surveys have been conducted on Proposition 64 with voter support ranging from 52%-71%, respondent opposition ranging from 26%-40% and between 3%-8% were undecided. (*Source:* Survey USA, September 2016; USC Dornsife/*Los Angeles Times*, September 2016; California Counts, August 2016; Probolsky Research, August 2016)

**Proposition 65: Carryout Bags. Charges. (Initiative Statute)**

This initiative redirects money collected by grocery and certain other retail stores through mandated sale of carryout bags. Requires stores to deposit bag sale proceeds into a special fund to support specified environmental projects.

**Fiscal Impact:** Potential state revenue of several tens of millions of dollars annually under certain circumstances, with the monies used to support certain environmental programs.

**Polling:** No polling data available at time of publication.

**Proposition 66: Death Penalty. Procedures. (Initiative Statute)**

This initiative keeps death penalty in place and changes death penalty procedures to speed up the appeals process by putting trial courts in charge of initial petitions challenging death penalty convictions, establishing a time frame for death penalty review, and requiring appointed attorneys to work on death penalty cases.

**Fiscal Impact:** Unknown ongoing impact on state court costs for processing legal challenges to death sentences. Potential prison savings in the tens of millions of dollars annually.

**Polling:** 75.7% of respondents would be in “favor” of Proposition 66, while 24.3% would “oppose”. (*Source:* UC Berkeley Institute of Governmental Studies, June/July 2016)

**Proposition 67: Ban On Single-Use Plastic Bags. (Referendum)**

This initiative prohibits grocery and other stores from providing customers single-use plastic or paper carryout bags but permits sale of recycled paper bags and reusable bags.

**Fiscal Impact:** Relatively small fiscal effects on state and local governments, including a minor increase in state administrative costs and possible minor local government savings from reduced litter and waste management costs.

**Polling:** 59% of respondents would “support” Proposition 67, while 34% would “oppose” and 7% were undecided. (*Source:* USC Dornsife/*Los Angeles Times*, October 2014)



For additional information on the statewide propositions that qualified for the November 2016 ballot, visit the Secretary of State website.

## **YPICS:**

### ***MORCS Renewal***

On Tuesday, September 20, 2016, Monseñor Oscar Romero Charter School was renewed for another 5 years by the LAUSD Board of Education. All of this happened on consent (no board member contested the approval recommended by the Charter Schools Division). The strategy employed throughout the renewal process for MORCS was recommended by CCSA and ensured that we moved forward with other strong charter schools: Fenton Avenue Charter School, Fenton Primary Center, Santa Monica Boulevard Community Charter School (under the leadership of our Board Treasurer Joe Lucente), Equitas, and Synergy. This strategy of moving forward with charter school friends who reflect the same level of integrity and strong reputation as MORCSW was the key to such an inconsequential renewal. We thank the CCSA staff for their efforts to accomplish the approvals for all new and renewing schools, and we will employ this same strategy when it is time to renew Bert Corona in two years.

### ***Parent Conferences***

All three YPICS are holding parent conferences this week. Parent attendance is has exceeded the 88% for the high school and over 95% for the middle schools. At the time of this writing conferences are still underway, therefore, we will provide you with final data for all three schools next month's report.



# Coversheet

## Central Office Lease

**Section:** III. ITEMS SCHEDULED FOR INFORMATION  
**Item:** B. Central Office Lease  
**Purpose:** FYI  
**Submitted by:**  
**Related Material:** CA Lease 10660 White Oak.pdf



## STANDARD MULTI-TENANT OFFICE LEASE - GROSS AIR COMMERCIAL REAL ESTATE ASSOCIATION

**1. Basic Provisions ("Basic Provisions").**

1.1 Parties: This Lease ("Lease"), dated for reference purposes only June 10, 2015

is made by and between Peter Huang and Loretta Huang

("Lessor")

and YPI CHARTER SCHOOLS, INC

("Lessee"),

(collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), known as Suite Numbers(s) B101 floor(s), consisting of approximately 2500 rentable square feet and approximately \_\_\_\_\_ useable square feet ("Premises"). The Premises are located at: 10660 White Oak Avenue in the City of Granada Hills, County of Los Angeles, State of California, with zip code 91344. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 28,256 rentable square feet. (See also Paragraph 2)

1.2(b) Parking: 7 unreserved and 0 reserved vehicle parking spaces at a monthly cost of \$0 per unreserved space and \$0.00 per reserved space. (See Paragraph 2.6)

1.3 Term: Five (5) years and 0 months ("Original Term") commencing SEE-PARAGRAPH-1.3(a) ("Commencement Date") and ending September 30, 2020 ("Expiration Date"). (See also Paragraph 3)

1.3(a)-October 1, 2015 or completion tenants improvement

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing \_\_\_\_\_ ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$2,750.00 per month ("Base Rent"), payable on the 1st day of each month commencing 3 months after all permits are approved. (See also Paragraph 4) or October 1, 2015 whichever is later.

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 5.1

1.6 Lessee's Share of Operating Expense Increase: Five point zero eight percent (5.08%) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$2,750.00 for the period Oct1-Oct31, 2015 or first month after completing the T.I.

(b) Security Deposit: \$5,500.00 ("Security Deposit"). (See also Paragraph 5)

(c) Parking: \$0.00 for the period \_\_\_\_\_

(d) Other: \$0.00 for \_\_\_\_\_

INITIALS

INITIALS

(e) **Total Due Upon Execution of this Lease: \$8,250.00**

1.8 **Agreed Use:** General Offices and all related legal uses

(See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2015. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers ( the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- none represents Lessor exclusively ("Lessor's Broker");
- \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or
- \_\_\_\_\_ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \$0.00 or 0 % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by \_\_\_\_\_ ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 8:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 9:00 a.m. to 1:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and \_\_\_\_\_

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- Janitorial services
- Electricity : Tenant to pay electrical bill for the premises as billed by the landlord within five (5) days of the receipt.
- Other (specify): \_\_\_\_\_

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 50 through 55;
- a plot plan depicting the Premises; #52
- a current set of the Rules and Regulations; #50
- a Work Letter;
- a janitorial schedule;
- other (specify): #51 AIR Rent Adjustment, #53 Master Covenant and Agreement: "Compliance with Building covenants:tenant shall comply with Master Covenant and Agreement dated September 23, 2002, which shall be attached as an Addendum (53), Arbitration Agreement (54), 55.-Addendum for T.I.

**Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 19) or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the



commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

**2.4 Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

**2.5 Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

**2.6 Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

**2.7 Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

**2.8 Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.9 Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

**3. Term.**



3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

(a) "Base Year" is as specified in Paragraph 1.9.

(b) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "Operating Expenses":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.



(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder.

The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous



**Substance.**

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**



(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

#### 7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

#### 8. Insurance; Indemnity.

8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

#### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.



(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

### 8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

### 8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(c) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any



requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

**9. Damage or Destruction.**

**9.1 Definitions.**

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or

INITIALS

INITIALS



restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definitions.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or



a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

- (e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.
- (f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

**12.2 Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

**13. Default; Breach; Remedies.**

**13.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. **THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.**

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety

INITIALS

INITIALS



sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.



**13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**15. Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

**16. Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be

\_\_\_\_\_  
INITIALS\_\_\_\_\_  
INITIALS



performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) **THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.**

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal



proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly bases. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.



36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party



shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease  is  is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:  have not undergone an inspection by a Certified Access Specialist (CASp).  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
- RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.  
Executed at: Granada Hills Executed at: Granada Hills  
On: \_\_\_\_\_ On: \_\_\_\_\_

By LESSOR:  
Peter Huang

By LESSEE:  
YPI-CHARTER SCHOOLS, INC

By: \_\_\_\_\_  
Name Printed: Peter Huang  
Title: Owner

By: \_\_\_\_\_  
Name Printed: Ruben Duenas  
Title: Chief Operations Officer

By: \_\_\_\_\_  
Name Printed: Loretta Huang  
Title: Owner  
Address: 10660 White Oak Avenue  
Granada Hills , CA 91344

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS

Telephone:(818) 832-1550  
Facsimile:( )  
Email:  
Email:  
Federal ID No.

Telephone:( )  
Facsimile:( )  
Email:  
Email:  
Federal ID No.

**LESSOR'S BROKER:**

**LESSEE'S BROKER:**

Attn:  
Address:

Attn:  
Address:

Telephone:( )  
Facsimile:( )  
Email:  
Broker/Agent BRE License #:

Telephone:( )  
Facsimile:( )  
Email:  
Broker/Agent BRE License #:

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

**©Copyright 1999-By AIR Commercial Real Estate Association.  
All rights reserved.**

**No part of these works may be reproduced in any form without permission in writing.**

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS



## RULES AND REGULATIONS FOR STANDARD OFFICE LEASE

Paragraph-50

Dated: June-10, 2015

By and Between Peter and Loretta Huang, as lessor and YPI-CHARTER SCHOOL, INC, as lessee

### GENERAL RULES

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways, walkways and stairways.
2. Lessor reserves the right to refuse access to any persons Lessor in good faith judges to be a threat to the safety and reputation of the Project and its occupants.
3. Lessee shall not make or permit any noise or odors that annoy or interfere with other lessees or persons having business within the Project.
4. Lessee shall not keep animals or birds within the Project, and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
5. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
6. Lessee shall not alter any lock or install new or additional locks or bolts.
7. Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.
8. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Project.
9. Lessee shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration or floor loading in any part of the Project.
10. Furniture, significant freight and equipment shall be moved into or out of the building only with the Lessor's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by Lessor. Lessee shall be responsible for any damage to the Office Building Project arising from any such activity.
11. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Lessor.
12. Lessor reserves the right to close and lock the Building on Saturdays, Sundays and Building Holidays, and on other days between the hours of 6.00 P.M. and 8.00 A.M. of the following day. If Lessee uses the Premises during such periods, Lessee shall be responsible for securely locking any doors it may have opened for entry.
13. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
14. No window coverings, shades or awnings shall be installed or used by Lessee.
15. No Lessee, employee or invitee shall go upon the roof of the Building.
16. Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.
17. Lessee shall not use any method of heating or air conditioning other than as provided by Lessor.
18. Lessee shall not install, maintain or operate any vending machines upon the Premises without Lessor's written consent.
19. The Premises shall not be used for lodging or manufacturing, cooking or food preparation.
20. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.
21. Lessor reserves the right to waive any one of these rules or regulations, and/or as to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee.
22. Lessee assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
23. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Project and its occupants. Lessee agrees to abide by these and such rules and regulations.

### PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."
2. Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
3. Parking stickers or identification devices shall be the property of Lessor and be returned to Lessor by the holder thereof upon termination of the holder's parking privileges. Lessee will pay such replacement charge as is reasonably established by Lessor for the loss of such devices.
4. Lessor reserves the right to refuse the sale of monthly identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.

PAGE 1 OF 2

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS



5. Lessor reserves the right to relocate all or a part of parking spaces from floor to floor, within one floor, and/or to reasonably adjacent offsite location(s), and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
8. Validation, if established, will be permissible only by such method or methods as Lessor and/or its licensee may establish at rates generally applicable to visitor parking.
9. The maintenance, washing, waxing or cleaning of vehicles in the parking structure or Common Areas is prohibited.
10. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
11. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
12. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

PAGE 2 OF 2

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS





# RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated June-10, 2015

By and Between (Lessor) Peter Huang and Loretta Huang

(Lessee) YPI-CHARTER SCHOOLS, INC

Address of Premises: 106660 White oak Suite B101  
Granada Hills , CA 91344

Paragraph 51

**A. RENT ADJUSTMENTS:**

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one):  CPI W (Urban Wage Earners and Clerical Workers) or  CPI U (All Urban Consumers), for (Fill in Urban Area):

Los Angeles - minimum three percent (3%), maximum eight percent (8%) to be  
calculated from base year at rate of \$1.10, All Items  
(1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the  first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or  (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the Base Rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s): \_\_\_\_\_

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an  appraiser or  broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but no limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further

Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s):

The New Base Rent shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Initial Term Adjustments.

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

b. NOTICE:

Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

c. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

**NOTICE:** These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203.

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS

**Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

\_\_\_\_\_  
**INITIALS**

\_\_\_\_\_  
**INITIALS**

Recording requested by and mail to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

I agree to comply with the Master Covenant and Agreement ( Paragraph 53 ).

Space Above This Line For Recorder's Use

MASTER COVENANT AND AGREEMENT

The undersigned hereby certifies I am (we are) the owners of the hereinafter legally described real property located in the City of Los Angeles, County of Los Angeles, State of California (please give the legal description):

TRACT: TR 9317, MAP REFERENCE: MB 126-37/39 LOT: 239 ARB: 5

Site Address 10660 N. WHITE OAK AVE. GRANADA HILLS, CA 91344

That in consideration of the approval of Case No. \_\_\_\_\_ by the City Planning Department, I (we) do hereby promise, covenant and agree to and with the City of Los Angeles and the City Planning Department of said City that to the extent of our interest, I (we): AGREE TO COMPLY WITH ENCLOSED EXHIBIT A PARAGRAPH (C).

This covenant and agreement shall run with the land and shall be binding upon any future owners, encumbrancers, their successors, heirs or assigns and shall continue in effect until the City Planning Department of the City of Los Angeles approves its termination.

\_\_\_\_\_  
(Print Name of Property Owner)

\_\_\_\_\_  
(Print Name of Property Owner)

\_\_\_\_\_  
(Signature of Property Owner)

\_\_\_\_\_  
(Signature of Property Owner)

Dated this 23 day of Sept 2002.

\*\*\*\*\* Space Below This Line For Notary's Use \*\*\*\*\*

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

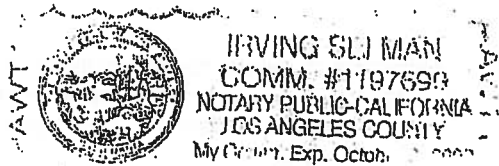
On 8-21-02 before me Irving Selman (name and title of officer), personally appeared Robert Adams, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

Notary Public Signature

(SEAL)



Case No. LAMC 12.22 A 23

Condition No(s). Existing building changed to corner commercial

Approved for recording by \_\_\_\_\_ Date: \_\_\_\_\_

(Department of City Planning)



a three-foot high decorative screening wall, hedge or similar plant material screening device shall be located a minimum of five feet from the lot line. A planted berm shall be located between the three-foot high screening wall, hedge or similar plant material screening device and the sidewalk and/or parkway. Notwithstanding the above, in the Downtown Business District as defined in Section 12.21 A 4 (i) of this Code, to separate the surface parking area from the adjacent sidewalk or parkway, a three-foot high decorative screening wall, hedge or similar plant material screening device shall be located at the lot line.

- (iii) **Landscaping—Setback.** A landscape (planted) area having a minimum inside width of five feet shall be required along all street frontages of the lot or lots and on the perimeters of all parking areas of the lot or lots which abut a residential zone or use. Notwithstanding the above, in the Downtown Business District as defined in Section 12.21 A 4 (i) of this Code, a landscape (planted) area having a minimum inside width of five feet shall be required on the perimeters of all parking areas of the lot which abut a residential zone or use.
- (iv) **Landscaping—Parking Areas.** Notwithstanding the landscaping requirements or provisions for exceptions and credits in Section 12.21 of this Code, at least five percent of all surface parking areas of the lot shall be landscaped. The provisions of this subparagraph shall not apply to lots with four or fewer surface parking spaces. Shade producing trees shall be planted at a ratio of one tree for every four surface parking spaces. The shade producing trees shall be approved by the Director of Planning. The location and size of the trees shall produce an overhead canopy effect that is anticipated to cover at least 50 percent of the parking area after ten years of growth.
- (v) **Trees.** Shade producing trees, as identified in the Street Tree List of the Bureau of Street Maintenance, shall be planted along street frontages, singly or in groups. In addition to the requirements of Subsubparagraph (iv) above, at least one 24-inch box tree shall be planted for every 20 feet of street frontage of the lot or lots. An existing healthy mature tree may be substituted for two new required trees when set forth in a landscape plan, as provided for in this subparagraph.
- (7) **Irrigation System.** An automatic irrigation system shall be provided for all landscaped areas. This system shall be installed prior to the issuance of any certificate of occupancy.
- (8) **Windows.** At least fifty percent of all exterior walls (including doors) which face streets, shall consist of transparent windows, unless otherwise prohibited by law.
- (9) **Signs.**
  - (i) No person shall erect on the lot or lots the following signs, as defined in Section 91.6203 of this Code, without first obtaining a conditional use permit:
    - Off-site commercial signs;
    - Flashing or blinking signs;
    - Pennants, banners, ribbons, streamers, spinners or balloons;
    - Pole Signs;
    - Projecting signs; or
    - Roof signs.
  - (ii) Monument signs and information signs shall be located only within the landscape-planted areas.
- (10) **Utilities.** All new utility lines which directly service the lot or lots shall be installed underground. If underground service is not currently available, then provisions shall be made for future underground service.
- (11) **Front Yard.** The front yard requirements set forth in Sections 12.12.2 C, 12.13 C 1 and 12.13.5 B 1 of this Code shall not apply to Mini-Shopping Centers or Commercial Corner Developments.
- (b) **Conditions of Operation.** A Mini-Shopping Center or a Commercial Corner Development shall comply with the following conditions:
  - (1) **Lighting.** All areas of the lot or lots not covered by a building shall have night lighting for safety and security. Parking areas shall have a minimum of 3/4 foot-candle of flood lighting measured at the pavement. All other

open exterior areas, such as walkways and trash areas, shall have low level security-type lighting. All exterior lighting shall be directed onto the lot or lots, and all flood lighting shall be designed to eliminate glare to adjoining properties.

- (2) **Maintenance.** The exterior condition of the lot or lots, including but not limited to parking areas, exterior walls, and landscaped areas, shall at all times be maintained in a safe and sanitary condition and in a state of good repair. Exterior wall surfaces shall at all times be kept free from graffiti and any marks of vandalism.
  - (3) **Debris Removal.** Exterior surface areas of the lot or lots shall at all times be kept clear of weeds, rubbish, and all types of litter and combustible materials. Trash receptacles shall be located throughout the open areas of the lot or lots.
  - (4) **Hours.** Parking lot cleaning and sweeping, trash collections from and deliveries to a Mini-Shopping Center or Commercial Corner Development shall occur no earlier than 7 a.m., nor later than 8 p.m., Monday through Friday, and no earlier than 10 a.m., nor later than 4 p.m., on Saturdays and Sundays.
  - (5) **Landscape Maintenance.** Maintenance of landscaped areas shall include continuous operations of watering, removal of weeds, mowing, trimming, edging, cultivation, reseeding, plant replacement, fertilization, spraying, control of pests, insects, and rodents, or other operations necessary to assure normal plant growth. All trees, shrubs and ground cover shall be healthy and vigorous. Irrigation systems, installed pursuant to the requirements in Paragraph (a) (7) above, shall be continuously maintained.
  - (6) **Covenant.** Prior to the issuance of a building permit or use of land permit, the owner of the lot or lots shall execute and record a covenant and agreement in a form satisfactory to the Director of Planning, acknowledging that the owner will implement each of the conditions set forth in Paragraph (b) of this subdivision, and will not permit the erection of any of the signs enumerated in Paragraph (a) (9) (i) of this subdivision or the establishment of any uses enumerated in Paragraph (a) (1) (ii) of this subdivision without first obtaining a conditional use approval. The covenant and agreement shall provide that it runs with the land and shall be binding upon the owners, and any assignees, lessees, heirs, and successors of the owners. The City's right to enforce the covenant and agreement is in addition to any other remedy provided by law.
- (c) **Existing Building Changed to Mini-Shopping Center or Commercial Corner Development.**
- (1) An existing building or buildings may be converted to a Mini-Shopping Center or to a Commercial Corner Development without first obtaining a conditional use approval if (i) all alterations result in no more than a twenty percent increase in the existing floor area of all of the buildings on a lot or lots, and (ii) the Mini-Shopping Center or the Commercial Corner Development use complies with the requirements of Subparagraphs (1) and (9) of Paragraph (a) of this subdivision and with the conditions of operation of Paragraph (b) of this subdivision.
  - (2) For an existing Mini-Shopping Center, or existing Commercial Corner Development use on or after January 1, 1989, no person shall establish as a new use, any of the uses enumerated in Paragraph (a) (1) (ii) of this subdivision without first obtaining a conditional use approval. In addition, no sign identified in Paragraph (a) (9) of this subdivision shall be erected on the lot or lots without first obtaining a conditional use approval, unless a certificate of occupancy was issued as of the effective date of Ordinance No. 170,752.

minicovenant4-19-01





# ARBITRATION AGREEMENT

## Standard Lease Addendum

**Dated** June-10, 2015

**By and Between (Lessor)** Pgter Huang and Loretta Huanh

**(Lessee)** YPI CHARTER SCHOOL, INC

**Address of Premises:** 10660 White Oak Suite B101  
Granada Hills

Paragraph 54

**A. ARBITRATION OF DISPUTES:**

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

**B. DISPUTES EXCLUDED FROM ARBITRATION:**

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

**C. APPOINTMENT OF AN ARBITRATOR:**

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before:  a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"),  the American Arbitration Association ("AAA") under its commercial arbitration rules,  \_\_\_\_\_

or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: [http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG\\_003867](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867)). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS



**D. ARBITRATION PROCEDURE:**

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

**NOTICE:** These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

\_\_\_\_\_  
INITIALS

\_\_\_\_\_  
INITIALS

# Coversheet

## MORCS Construction Amendment to the Development Agreement

**Section:** V. ITEMS SCHEDULED FOR ACTION  
**Item:** A. MORCS Construction Amendment to the Development Agreement  
**Purpose:** Vote  
**Submitted by:**  
**Related Material:** Amendment to the agreement Retaining Wall.pdf

AMENDMENT  
TO  
DEVELOPMENT AGREEMENT

This Amendment is entered into by and between the LOS ANGELES UNIFIED SCHOOL DISTRICT, a public school district duly organized and existing under the laws of the State of California ("LAUSD"), and YPI CHARTER SCHOOLS INC., a California a California nonprofit public benefit corporation, and the operator of the Monseñor Oscar Romero Charter School ("MORCS"), a charter school duly existing under the laws of the State of California (collectively, jointly and severally "Developer"), with reference to the following facts,

RECITALS:

A. Developer and LAUSD entered into that certain Development Agreement dated May 11, 2016 ("Development Agreement").

B. LAUSD owns that certain real property at 1157 S. Berendo Street, City of Los Angeles, County of Los Angeles, State of California, as more particularly depicted on Exhibit A-1 and A-2 of the Development Agreement dated May 11, 2016 ("Berendo MS").

C. Developer intends to construct a new 6-8 grade charter school ("Project") on a portion of the Land, pursuant to the terms and conditions of that certain Development Agreement dated May 11, 2016.

D. On November 18, 2014, the LAUSD Board of Education approved a project (Colin #10366484) at Berendo MS to address a deteriorating retaining wall along 11<sup>th</sup> Street, which is more accurately described in Exhibit K, attached hereto and incorporated herein by reference, and the construction of a replacement retaining wall ("Retaining Wall Project"). The Retaining Wall Project is funded with LAUSD Bond Program funds earmarked specifically for critical school repair and safety improvements to school building components.

E. The Retaining Wall Project is adjacent to the new MORCS Project. Additionally, Developer intends to begin construction of the MORCS Project in the 1<sup>st</sup> Quarter of 2017.

F. On September 9, 2016, the Developer's project team and LAUSD met at Berendo MS to review the coordination of the Project and the Retaining Wall Project. Based on this meeting, it was determined it would be impractical for LAUSD to repair the retaining wall during the MORCS construction. Additionally, it was determined at the meeting that it may be mutually beneficial for Developer to extend the construction of its retaining wall to encompass the Retaining Wall Project.

NOW, THEREFORE, for good consideration had and received and the terms and conditions contained in the Development Agreement, Developer and LAUSD hereby agree as follows:

1. Retaining Wall Project. Developer shall prepare a design and include as a bid alternative during the bidding of the MORCS Project, the inclusion of the Retaining Wall



Project, described in **Exhibit K**, consisting of approximately 130 linear feet from the end of the new retaining wall as shown in the MORCS DSA approved plans dated March 10, 2015, and the most western point.

2. LAUSD Review and Approval. LAUSD shall provide written approval of the Design fee proposal within one (1) working day from its receipt from Developer. Additionally, LAUSD shall provide written approval of the retaining wall design for the Retaining Wall Project within two (2) working days from receipt of the complete design from Developer. The term “working day” or “working days” shall mean that time period occurring from 8:00 a.m. to 5:00 p.m., Monday thru Friday, and excluding any day that LAUSD headquarters at 333 So. Beaudry Ave, Los Angeles, is not open for regular business.

3. LAUSD approval of Bid Alternate. LAUSD shall provide written approval within three (3) working days of its receipt of the bid alternate amount for the Retaining Wall Project. LAUSD reserves the right to reject the bid alternate amount and, upon rejection, LAUSD shall be required to reimburse Developer for the previously approved design fees for the preparation of the bid alternate, and for legal fees for the review of this Amendment, and this Amendment shall be deemed terminated and the parties shall have no further rights or obligations to one another under this Amendment. Upon receipt of the design fees Developer shall deliver to LAUSD the design of the Retaining Wall Project and LAUSD shall thereafter be considered the owner of said design and may use such as it deems appropriate.

If LAUSD accepts the bid alternate amount for the Retaining Wall Project, LAUSD shall ensure that budget is allocated for the bid alternate amount plus an additional 10% for potential change orders for the Retaining Wall Project (“RWP Funds”). Any change orders to the Retaining Wall Project shall require the prior written approval of LAUSD. LAUSD shall approve or reject a change order for the Retaining Wall Project within two (2) working days of its receipt from Developer. If the change order is disapproved, Developer shall have the right to appeal the change order request to a third party arbitrator, mutually agreed upon by LAUSD and Developer, for the final approval or rejection of the change orders. LAUSD understands that change orders for the Retaining Wall Project may exceed 10% of the bid alternate amount.

Developer shall submit to LAUSD an invoice or invoices for payment upon LAUSD’s acceptance of the bid alternate and upon approval LAUSD shall submit for disbursement from the RWP Funds which may take approximately (4) four weeks for the disbursement to occur. The invoice(s) shall include design and permitting fees, and the amount of the bid alternate. RWP Funds are characterized differently than Augmentation Grant Award funds and may be utilized as needed. A schedule of values shall be provided at the beginning of the Retaining Wall Project construction and billing shall coincide with said progress.

4. Construction. Developer shall complete the Retaining Wall Project utilizing new materials within six months of the Notice to Proceed with Construction (NTP2) for the Project.

5. Conflict; Definition. In the event of any conflict between the Development Agreement and this Amendment, this Amendment shall supersede on the issues addressed herein. Otherwise the terms and conditions of the Development Agreement shall apply to the

**Retaining Wall Project.** Any capitalized term or phrase contained herein shall have the same meaning as set forth in the Development Agreement.

6. **Effective Date.** The Effective Date of this Amendment shall be the last date set forth below.

IN WITNESS WHEREOF, LAUSD and Developer have executed this Amendment on the dates set forth adjacent to their respective signatures.

**LAUSD:**

LOS ANGELES UNIFIED SCHOOL DISTRICT,  
a school district duly formed and existing under the  
laws of the State of California

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date: \_\_\_\_\_

**Developer:**

**YPI CHARTER SCHOOLS, INC.,  
a California nonprofit corporation duly  
formed and existing under the laws of the  
State of California**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_



## **EXHIBIT K**

### **Description of Retaining Wall Project**

# Coversheet

## MORCS Building Construction Contract Approval

**Section:** V. ITEMS SCHEDULED FOR ACTION  
**Item:** B. MORCS Building Construction Contract Approval  
**Purpose:** Vote  
**Submitted by:**  
**Related Material:**

- 1 MORCS Construction Contract Approval Board resolution.docx
- 2 MORCS Project Budget.pdf
- 3 Funding Sources.pdf
- 4 Bid Tally information- Lowest Bid w: alternates.pdf
- 5 BID ALTERNATES Attachment 1 \_ AS102.pdf
- 6 BID ALTERNATES Attachment 2 \_ A506.pdf
- 7 Novus Construction Bid Form.pdf
- 9 MORCS Bidding Document Forms 2\_LCP w exhibits.pdf
- 10 Contractor Agreement Form- To be signed .pdf
- 8 MORCS Bidding Documents Forms 1.pdf

## RESOLUTIONS OF THE BOARD OF DIRECTORS OF YPI CHARTER SCHOOLS, INC.

### Resolutions re. Monsenor Oscar Romero Charter School 1157 S. Berendo Street, Los Angeles, CA 90006

**WHEREAS**, YPI Charter Schools, Inc. (“YPICS”), a California nonprofit benefit corporation, is organized for charitable purposes;

**WHEREAS**, YPICS desires to build a new middle school campus (the “**Project**”) for use by ~~the~~ YPICS’s public charter school officially known as Monseñor Oscar Romero Charter School (the “**School**”) on property (the “**Property**”) that the YPICS intends to lease from the Los Angeles Unified School District at Berendo Middle School, located at 1157 S. Berendo Street, Los Angeles, CA 90006;

**WHEREAS**, YPICS was previously approved for an award by the State of California acting by and through the State Allocation Board, the Office of Public School Construction and the California Department of Education (the “**State**”) under Proposition 47, Proposition 55, and Proposition 1D (Application Numbers 54/64733-00-082 and 54/64733-00-083) (together, the “**State Award**”) to finance the construction of improvements thereon to house the School;

**WHEREAS**, the School was added to the State Allocation Board’s Unfunded List on December 9, 2015 and ~~YPICS~~ was approved for a School Facility Program Priority Funding Apportionment by the State Allocation Board at its August 17, 2016 meeting;

**WHEREAS**, the State determined that the total State Award is \$15,643,256, comprised of a grant in the amount of \$7,821,628 (the “**State Grant**”), and a loan to ~~the~~ YPICS in the amount of \$7,821,628 (the “**State Loan**”);

**WHEREAS**, as of the date hereof the YPICS has received a funded approval for the full amount of the State Award and expects funds to be released after submittal of the fund release request in November 2016;

**WHEREAS**, YPICS has been approved for an Augmentation Grant from the Los Angeles Unified School District in the amount of \$8,575,000 and YPICS has applied for an increased Augmentation Grant from the Los Angeles Unified School District, which District staff is recommending for approval on November 15, 2016, and which grant will provide 50% of the project ~~construction~~ cost, an estimated grant of \$15,039,909;

**WHEREAS**, YPICS has entered into an agreement with Pacific Charter School Development, Inc. to oversee the development of the Project, YPICS retained Arcadis to provide pre-construction services including the management of the public bidding process, and intends to retain a construction management firm to provide construction management during the construction phase;

**WHEREAS**, Arcadis and PCSD oversaw a public bid process as required by Public Contracting Code, resulting in their recommendation that YPICS award the construction contract to the low bidder named in Exhibit A attached hereto (“**Contractor**”), for the price set forth in Exhibit A (“**Construction Contract**”);

**WHEREAS**, the Board of Directors of YPICS (the “**Board**”) deems it in the best interest of YPICS and in furtherance of the charitable purposes of YPICS that, to develop and construct the Project on the Premises for use by the School, it award the Construction Contract to the Contractor as generally described on Exhibit A;

**WHEREAS**, the Board deems it in the best interest of YPICS and in furtherance of the charitable purposes of YPICS that YPICS shall take all actions necessary or advisable to facilitate the foregoing transactions (collectively, the “**Transactions**”);

**NOW, THEREFORE, BE IT RESOLVED**, that YPICS is hereby authorized, directed and empowered to enter into the Transactions to which it is a party, including but not limited to the Construction Contract;

**RESOLVED FURTHER**, that the officers of YPICS, and each of them individually, shall execute on behalf of the YPICS such agreements and notices to proceed, or instruments as such officers may deem necessary or advisable to facilitate the Transactions;

**RESOLVED FURTHER**, that the Executive Director or Chief Operating Officer of YPICS is authorized to manage construction of the Project, including without limitation signing the Construction Contract, issuing notices to proceed, authorizing change orders not to exceed the total project budget and authorizing payment to the Contractor and other vendors as construction progresses;

**RESOLVED FURTHER**, that YPICS hereby ratifies and confirms the acts of its officers, agents or employees taken on behalf of YPICS in connection with the Transactions;

**RESOLVED FURTHER**, that by the adoption of these resolutions, the Board hereby reconfirms, ratifies and adopts all prior actions of the Board which may have previously been taken in connection with the Transactions;

**RESOLVED FURTHER**, that all prior resolutions of the Board or any parts thereof in conflict with any or all of the foregoing resolutions are hereby repealed to the extent of such conflict;

**RESOLVED FURTHER**, that these resolutions shall take effect and be in full force immediately after their adoption by the Board; and

**RESOLVED FURTHER**, that the officers of YPICS, and each of them individually, are hereby authorized and empowered, for and on behalf of YPICS, to execute and deliver any and all documents, instruments and agreements, and to perform or cause to be performed any and all acts as may, in their judgment, be necessary or desirable to accomplish the purposes of the foregoing resolutions and the transactions contemplated thereby and by the agreements therein approved, and any such documents, instrument or agreements so executed and delivered or actions taken by them or any of them shall be conclusive evidence of their authority in so doing.



### CERTIFICATE OF SECRETARY

The undersigned Secretary of YPI Charter Schools, Inc. (“**YPICS**”), a California nonprofit benefit corporation, certifies that the foregoing Resolutions were adopted by a majority vote of the members of the Board of Directors of the YPICS then in office at a meeting of the Board of Directors of the YPICS duly held on October 24, 2016, in compliance with the notice, agenda and open meeting requirements of the Ralph M. Brown Act at which a quorum was present at the time of the vote.

Date: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary

**EXHIBIT A**

**Construction Contract**

<b>Lowest Bid Contractor</b>	<b>Base Bid</b>	<b><u>Bid Alternates</u></b>	<b>Accepted deductive alternates<sup>1</sup></b>	<b>Total Contract Value<sup>4</sup></b>
Novus Construction	<del>\$8,219,535</del> <u>21,599,000</u>	1. <u>\$25,000</u> 2. <u>\$30,000</u> 3. <u>\$18,300</u> 4. <u>\$225,244</u> 5. <u>\$28,900</u>	<del>4 and</del> <u>4 and 5</u>	<del>\$8,219,535</del> <u>\$25,853,144</u>
<del>Site Demo, Abatement, Earthwork</del>	<del>\$946,168</del>	<del>0</del>	<del>\$996,168</del>	
<del>General Construction (incl. Sheet Metal, Doors &amp; Window Hardware, and Misc. Specialties)</del>	<del>\$1,758,000</del>	<del>0</del>	<del>\$1,795,400</del>	
<del>Structural Concrete</del>	<del>\$265,000</del>	<del>0</del>	<del>\$537,000</del>	
<del>Masonry</del>	<del>\$552,000</del>	<del>0</del>	<del>\$567,000</del>	
<del>Structural Steel</del>	<del>\$304,777</del>	<del>0</del>	<del>\$314,777</del>	
<del>Sheet Metal</del>				
<del>Doors, Windows, &amp; Hardware</del>				
<del>Misc. Specialties</del>				
<del>Fire Sprinklers</del>	<del>\$51,234</del>	<del>0</del>	<del>\$54,234</del>	
<del>Mechanical</del>	<del>\$217,000</del>	<del>0</del>	<del>\$224,500</del>	
<del>Site &amp; Building Plumbing</del>	<del>\$890,000</del>	<del>0</del>	<del>\$920,000</del>	
<del>Electrical, Fire Alarm &amp; Low Voltage</del>	<del>\$464,000</del>	<del>0</del>	<del>\$494,000</del>	
<del>Landscape &amp; Irrigation</del>	<del>\$223,300</del>	<del>0</del>	<del>\$228,100</del>	

--	--

**Notes:**

~~1.....Includes allowance amount~~

~~2.....Previously awarded; final contract value will change due to escalation occurring between the date on which the bid was accepted and the construction-~~

~~3.....Consolidated with general trade package (BP03)<sup>1</sup>. Bid alternate 4 is the Berendo MS retaining wall repair, which will be reimbursed by LAUSD~~

~~Bid alternate 5 is additional transformer yard scope per DWP requirements~~

**Monsenor Oscar Romero Charter School - YPI Charter Schools - Development Budget**

<b>Project Information</b>	Date of last budget revision:	10/19/2016
Building Sq. Ft.: 54,000		
Gym Sq. Ft.: 0		
Grade Configuration: 6-8		
Maximum Capacity: 405		
School Occupancy: August 2018		

		Approved Budget	Notes
<b>Acquisition Costs</b>			
AC1.2	Acquisition Price: Land plus Improvements	\$ -	
AC-OTH	Other Acquisition Costs	\$ -	
<b>Acquisition Cost Subtotal</b>		<b>\$ -</b>	
<b>Hard Costs</b>			
HC1.3	New Construction: DSA - Traditional	\$ 21,701,200	<i>GC low bid, not incl retaining wall reimbursed by LAUSD</i>
HC4	Sitework	\$ -	<i>included in GC bid</i>
HC5	Offsite Construction	\$ -	<i>A-permit work included in GC bid</i>
HC6	Utilities Installation (AT&T, DWP, Edison, etc.)	\$ 450,000	
HC7	Environmental Remediation	\$ 55,000	<i>Soil removal</i>
HC8	Furniture, Equipment, Low-voltage, school start up costs	\$ 1,500,000	<i>Confirming if low voltage wiring is included in GC scope</i>
HC9	Payment and Performance Bond	\$ -	<i>included in construction estimate under bonds</i>
HC-OTH	LAUSD portable removal and site restoration	\$ 400,000	<i>Disconnect, abate, demo bungalows by LAUSD</i>
<b>Hard Cost Subtotal</b>		<b>\$ 24,106,200</b>	
<b>Soft Costs</b>			
SC1.3	Due Diligence: ALTA/Topographic	\$ 14,869	<i>ALTA/topo, geophysical, legal description</i>
SC1-OTH	Due Diligence: Other	\$ 5,635	<i>PTR &amp; sewer potholing</i>
SC2	Legal Costs	\$ 70,000	<i>Dev't and Lease agreement, construction</i>
SC3	Architecture & Engineering	\$ 1,050,145	<i>GKK contract + amendments 1-3+retaining wall</i>
SC3.1	Cost Estimating	\$ 20,700	<i>Third party cost estimates</i>
SC4.5	Outreach & Notification	\$ 1,200	<i>Pre-construction public meeting etc.</i>
SC5.1	Environmental: CEQA Consultant (EIR, MND, etc.)	\$ 41,180	<i>ISMND consultant</i>
SC5.6	Environmental: Lead & Asbestos (ACM/LBP) Report	\$ -	<i>included in LAUSD portable removal</i>
SC5.8	Environmental: Phase I Site Assessment	\$ 4,777	
SC5.9	Environmental: Phase II Site Assessment	\$ 57,098	<i>Phase I Addendum</i>
SC5.12	Environmental: Traffic Study/Assessment	\$ -	<i>included in CEQA</i>
SC5.13	Environmental: Soils/Geotechnical Report	\$ 15,749	
SC5-OTH	Environmental: Other	\$ 10,703	<i>CEQA and DTSC noticing and meetings</i>
SC6.1	State Fees: Plan Check (DSA)	\$ 161,350	<i>Based on construction and change order estimate</i>
SC6.2	State Fees: DTSC	\$ 40,000	<i>Updated based on actuals and remaining oversight</i>
SC6.3	State Fees: CGS	\$ 3,600	
SC6.4	State Fees: Labor Compliance Monitoring (e.g. DIR)	\$ -	
SC6-OTH	State Fees: Other	\$ 5,000	<i>CHPS, CEQA notification, SWPPP</i>
SC7.1	Local Fees: Plan Check (e.g. LADBS)	\$ 15,000	<i>B-permit and LADOT reviews</i>
SC7.2	Local Fees: Permits	\$ 10,000	
SC7.3	Local Fees: Offsite Permits (e.g. "B" Permit)	\$ 10,000	<i>A-permit</i>
SC7.4	Local Fees: Bonds	\$ 30,000	<i>For excavation/sidewalk replacement</i>
SC7.5	Local Fees: Covenants	\$ -	
SC7-OTH	Local Fees: Other	\$ -	
SC8.1	Inspections: Local	\$ 20,000	
SC8.2	Inspections: State (IOR)	\$ -	
SC8.3	Inspections: Special (Deputy, Geotech Observation, Testing Labs, etc.)	\$ 225,000	
SC9.1	LEED: LEED/CHPS Commissioning Agent	\$ 39,040	<i>alliancePROJECT</i>
SC10.1	Insurance: Builder's Risk	\$ 128,000	
SC10.2	Insurance: Hazard	\$ -	
SC11	Site Security (pre-occupancy)	\$ -	<i>included in GC contract</i>
SC12	Taxes - Real Property (pre-occupancy)	\$ -	
SC13	Utilities (pre-occupancy)	\$ 50,000	<i>Confirm if in GC expenses</i>
SC-REIM	Reimburseables (Printing, Delivery, Mileage, etc.)	\$ 1,500	
SC-OTH	Other Soft Costs	\$ 10,000	
<b>Soft Cost Subtotal</b>		<b>\$ 2,040,546</b>	
<b>Financing Costs</b>			
<b>Financing Cost Subtotal</b>		<b>\$ -</b>	
<b>Management Costs</b>			
SC-MGMT.2	Project Management Fee	\$ 602,000	
SC-MGMT.3	Construction Management Fee	\$ 775,452	<i>CM during pre-construction and construction</i>
<b>Management Cost Subtotal</b>		<b>\$ 1,377,452</b>	
<b>Project Cost Subtotal</b>		<b>\$ 27,524,198</b>	
<b>Contingencies</b>			
HC-CONT	Contingency - Hard Costs	\$ 2,405,620	<i>10% of hard costs</i>
SC-CONT	Contingency - Soft Costs	\$ 150,000	
<b>Total Budget Contingencies</b>		<b>\$ 2,555,620</b>	

Budget Summary	
Acquisition Cost Subtotal	\$ -
Hard Costs Subtotal	\$ 24,106,200
Soft Costs Subtotal	\$ 2,040,546
Financing Costs Subtotal	\$ -
Management Costs Subtotal	\$ 1,377,452
<b>Subtotal Project Costs</b>	<b>\$ 27,524,198</b>
<i>Budget Contingencies</i>	<i>\$ 2,555,620</i>
<b>Total Project Budget</b>	<b>\$ 30,079,818</b>



**Monsenor Oscar Romero Charter School  
FUNDING SOURCES, updated 10/18/16**

CSFA Funding - New Construction	\$	14,681,246	50% of which is a grant and 50% is a 30-yr loan at 3%
CSFA Funding - Rehabilitation	\$	962,010	50% of which is a grant and 50% is a 30-yr loan at 3%
Anticipated Augmentation Grant at 50%	\$	15,039,909	50% of project costs

**Total current funding**  
\$ 30,683,165

**USES**

Total Project Budget	\$	30,079,818
Funding Surplus	\$	(603,347)

This does not include LAUSD reimbursement for the DWP increased scope due to the gym, estimated around \$30K

Total anticipated State loan in this scenario	\$	7,821,628	
LAUSD reimbursement for retaining wall	\$	240,598	<i>Design, construction and legal costs (estimated)</i>

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

**BID OPENING**

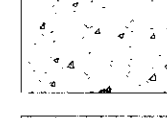
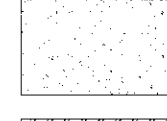

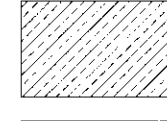
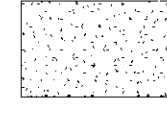
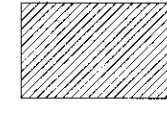
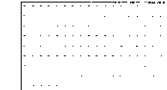
Friday, October 14, 2016

	BIDDER 1	BIDDER 2	BIDDER 3
Bidder name	Kemp	Novus	Pinner
Time received	1:57pm	1:58pm	1:59pm
Addendums acknowledged	yes	yes	yes
Bid Price	\$ 21,960,000.00	\$ 21,599,000.00	\$ 23,113,000.00
Alternate 1 <i>Concrete benches</i>	\$ 12,000.00	\$ 25,000.00	\$ 67,500.00
Alternate 2 <i>wood benches</i>	\$ 20,000.00	\$ 30,000.00	\$ 44,000.00
Alternate 3 <i>partition in RCP</i>	\$ 15,000.00	\$ 18,300.00	\$ 13,300.00
Alternate 4 <i>retaining wall</i>	\$ 325,000.00	\$ 225,244.00	\$ 446,454.00
Alternate 5 <i>DWP yard</i>	\$ 10,000.00	\$ 28,900.00	\$ 24,200.00
Total bid price	\$ 22,342,000.00	\$ 21,926,444.00	\$ 23,708,454.00

LAUSD.

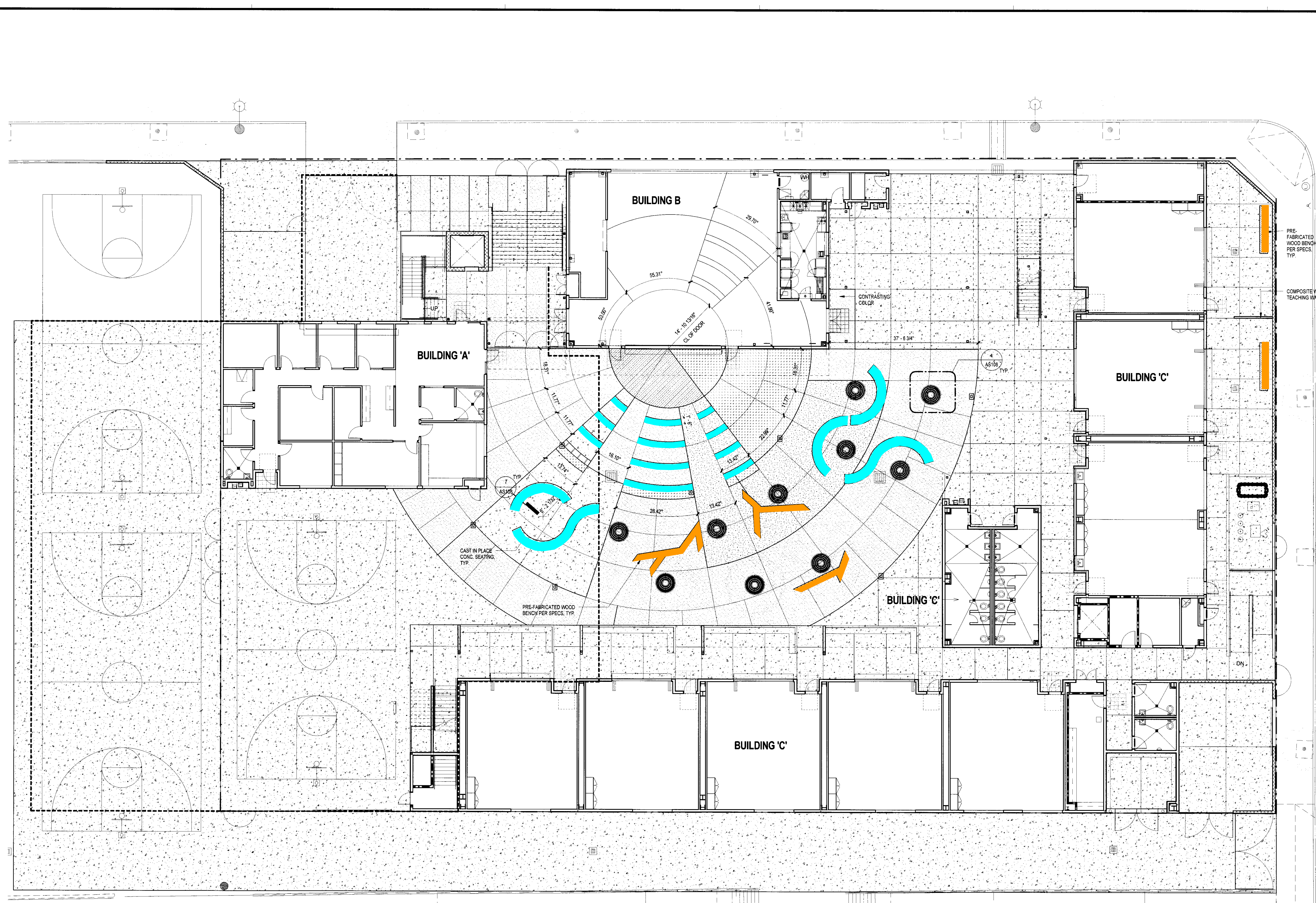


**FINISH LEGEND**

-  STANDARD CONCRETE (CONC-E4) - LIGHT BROOM FINISH. SEE SPECS.
-  CONCRETE - TOPCAST (CONC-E5) - LEVEL 5 FINISH. SEE SPECS.
-  INTEGRAL COLORED CONCRETE (CONC-E1)
-  INTEGRAL COLORED CONCRETE (CONC-E2)
-  INTEGRAL COLORED CONCRETE (CONC-E3)
-  LANDSCAPE FORMS - WOOD BENCH
-  CAST IN PLACE CONCRETE BENCH

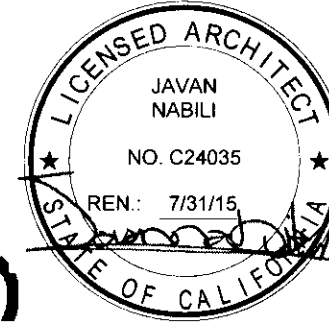
**SITE FINISH NOTES**

1. PROVIDE EXPANSION JOINTS AT BUILDINGS PER B & D/C004. TYPICAL.
2. FOR NEW CONC. FLATWORK: PROVIDE EXPANSION JOINTS PER F/C004 @ 25'-0" O.C. MAX OR AS INDICATED ON PLANS. WHERE NOT INDICATED, COORDINATE W/ JOINT PATTERN, SLOPE, PATTERN, STRUCTURAL AND CIVIL DWGS.
3. WHERE NEW CONC. FLATWORK MEETS EXISTING: PROVIDE EXPANSION JOINTS PER F/C004.
4. PROVIDE CONTROL JOINTS AS INDICATED BY CONCRETE FINISH PATTERN PER ACC04. WHERE EXPANSION JOINTS ARE NOT LOCATED.
5. PROVIDE DOWELED JOINT PER C/C004 WHERE EXISTING CONCRETE MEETS NEW CONCRETE AT TRENCHES.

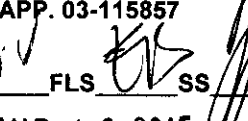


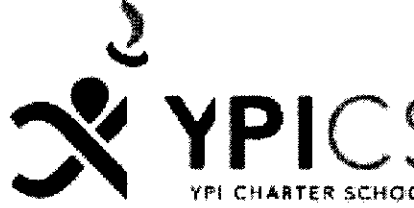
 **BID ALTERNATE #1:** DELETE CAST IN PLACE CONCRETE BENCHES

 **BID ALTERNATE #2:** DELETE PREFABRICATED WOOD BENCHES, SEE SPEC 12 93 40

**gkkworks**  
 155 South Fair Oaks  
 Pasadena | CA 91105  
 t 626.666.6906  
 f 626.666.3940  
 www.gkkworks.com  
 Architect Seal  


COPYRIGHT 2013  
 No part of the contents of this document may be reproduced or transmitted in any form or by any means without the written permission of gkkworks.

**IDENTIFICATION STAMP**  
 DIV. OF STATE ARCHITECTURE  
 APP. 03-118887  
 AC:  FLS 88  
 DATE: MAR 10 2015

  
**YPICS**  
 YPI CHARTER SCHOOLS

**MONSIEUR OSCAR ROMERO CHARTER SCHOOL**  
 1300 W. 116TH STREET  
 LOS ANGELES, CA 90006  
 A PROJECT FOR:  
**YOUTH POLICY INSTITUTE CHARTER SCHOOLS**

PROJECT NUMBER:  
**10149**

DRAWN: \_\_\_\_\_ Author

CHECKED: \_\_\_\_\_ Checker

ISSUE/REVISION:

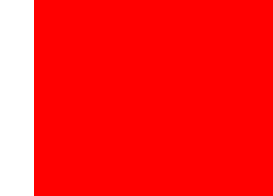

DSA BACKCHECK  
 MARCH, 2015

SITE SURFACING PLAN

AS102

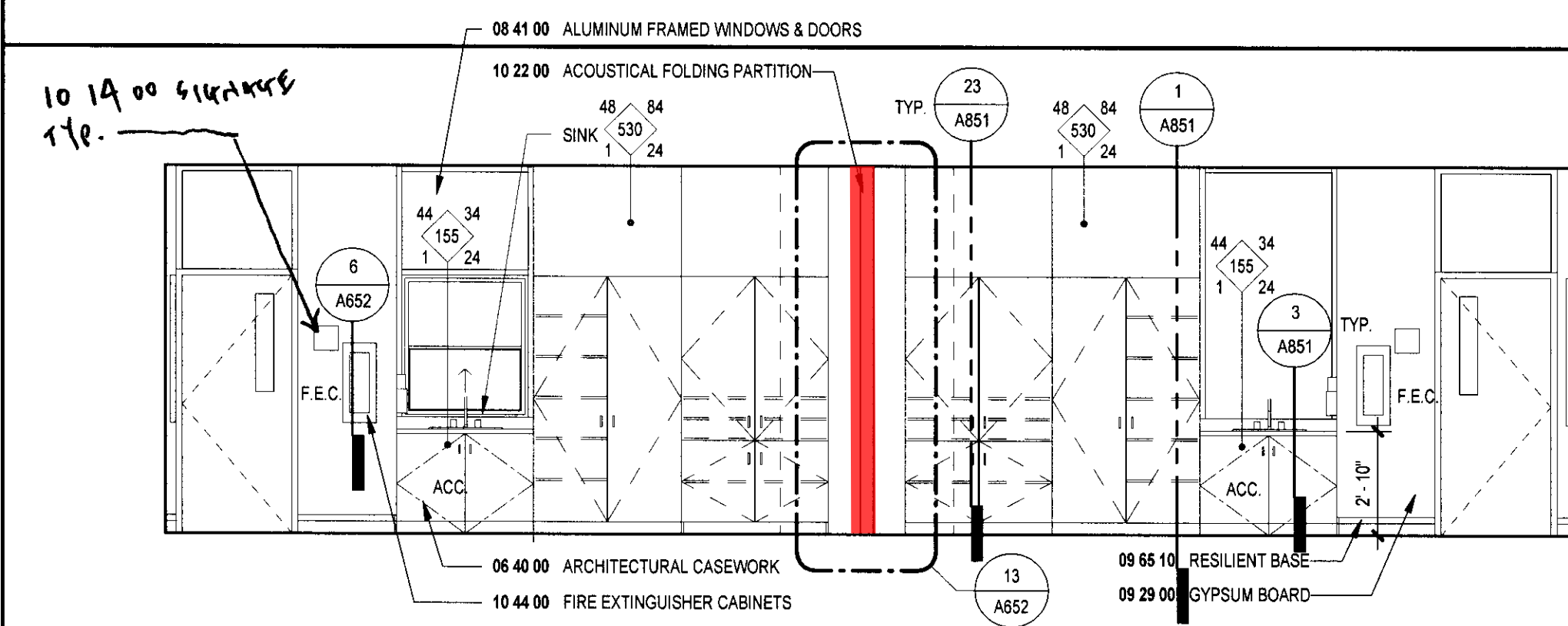
C:\Users\pdelm\Documents\MOR\_CNS04-113-0146\_gpamemr.xt  
 2/7/2014 4:58:11 PM  
 AS102 SITE SURFACING PLAN



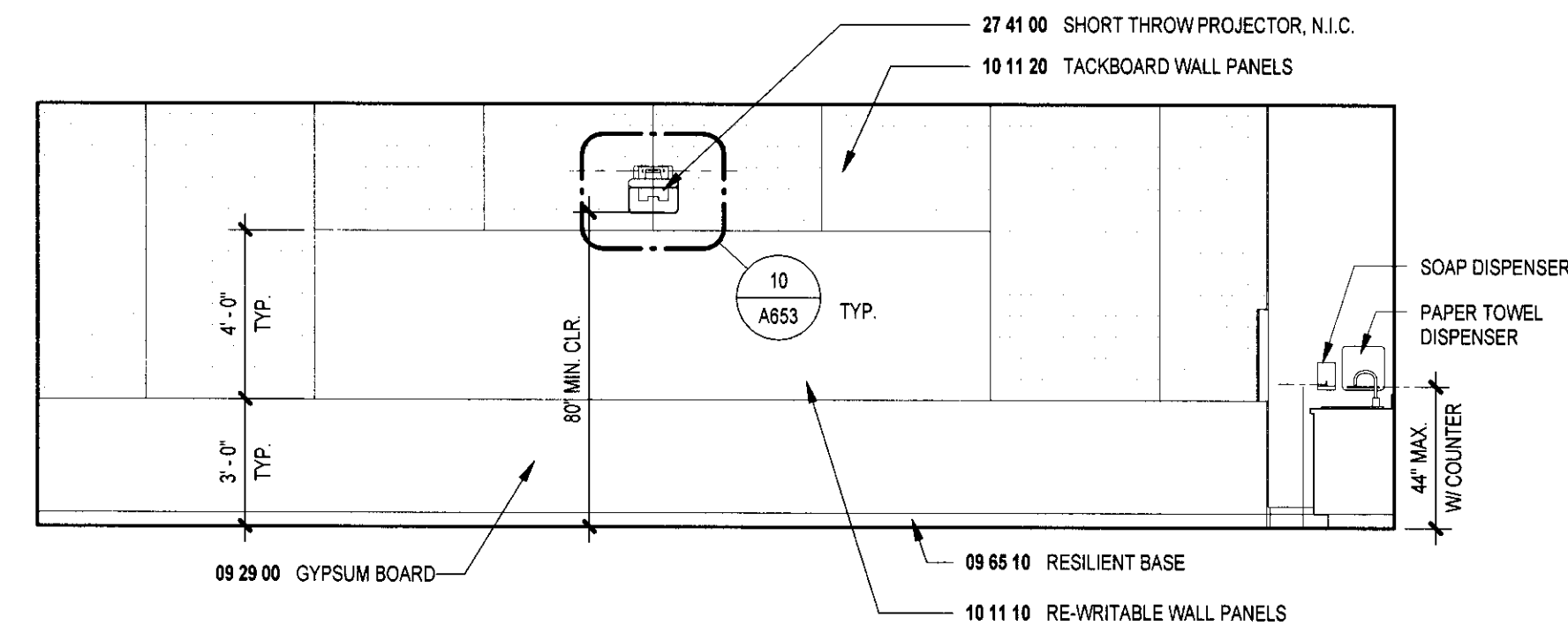


# BID ALTERNATE #3: DELETE OPERABLE ACOUSTICAL PARTITION

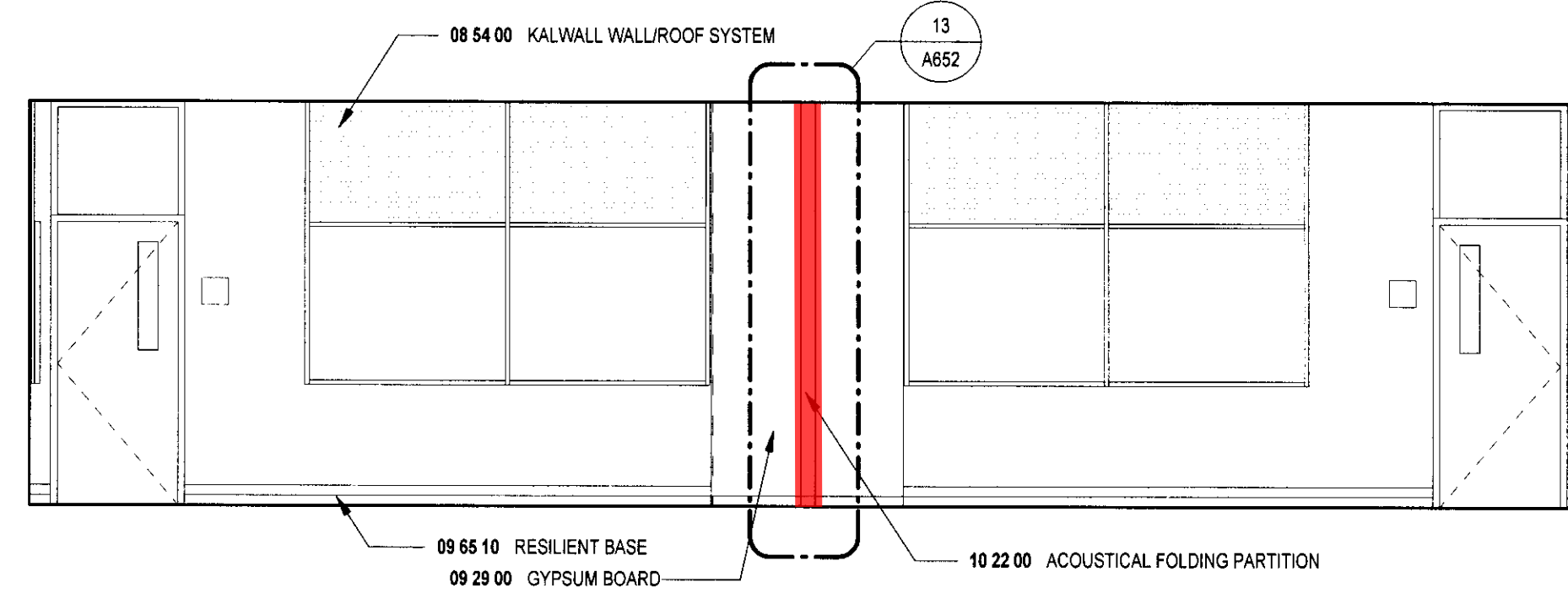
FOR FINISH MATERIAL AND COLORS REFER IN802 AND IN803 TYPICAL FOR ALL



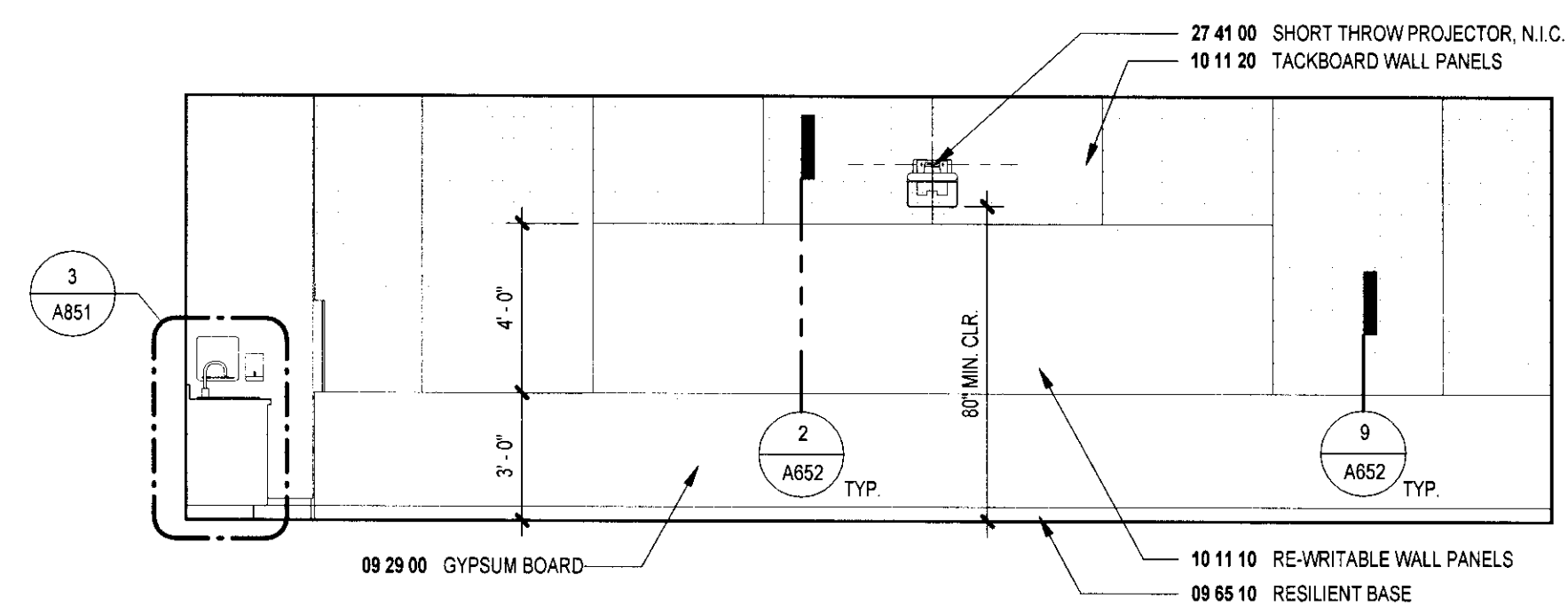
**SPECIAL EDUCATION / RESOURCE SPECIALIST C103 WEST**  
1/4" = 1'-0" **6**



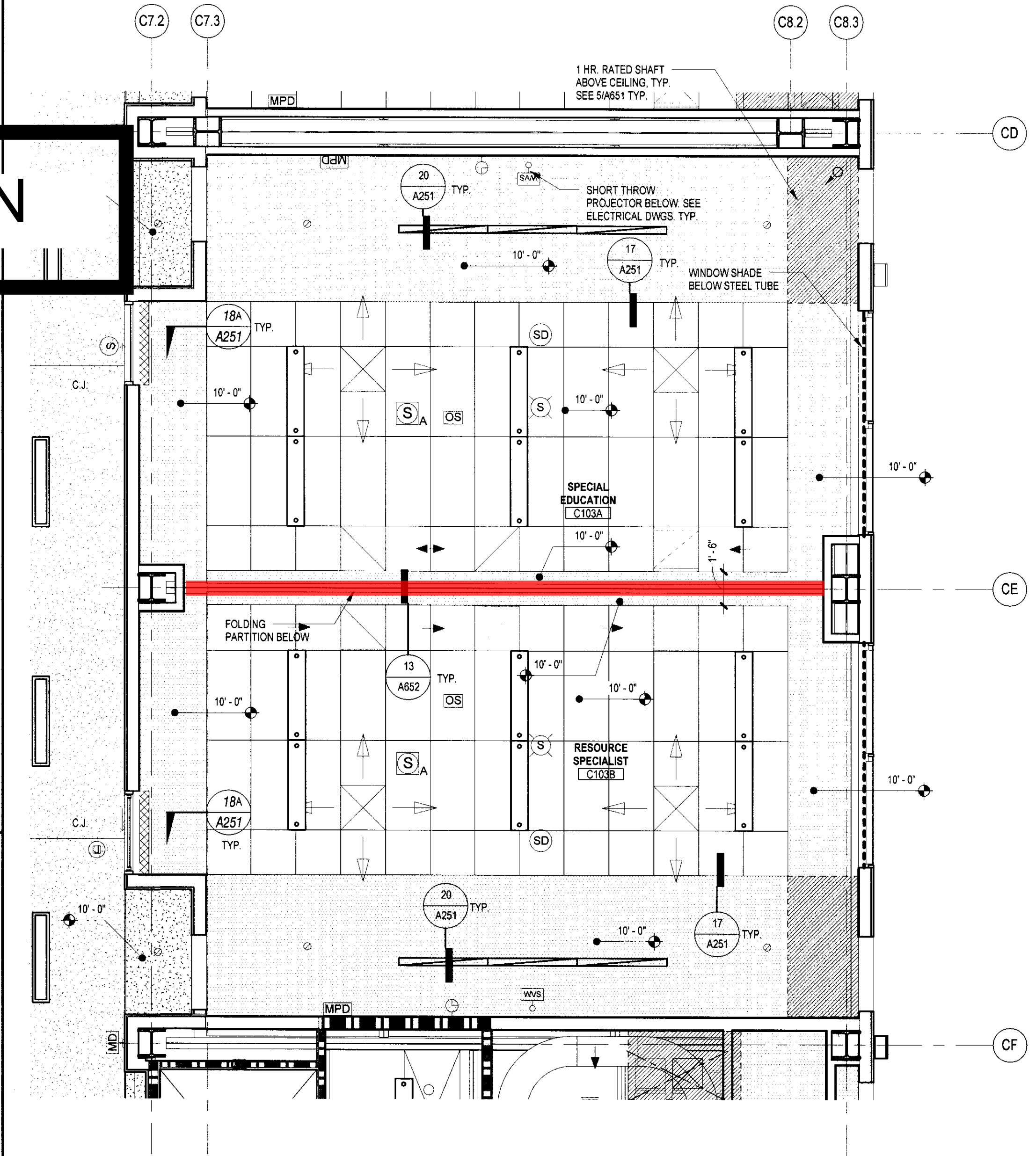
**SPECIAL EDUCATION / RESOURCE SPECIALIST C103 SOUTH**  
1/4" = 1'-0" **5**



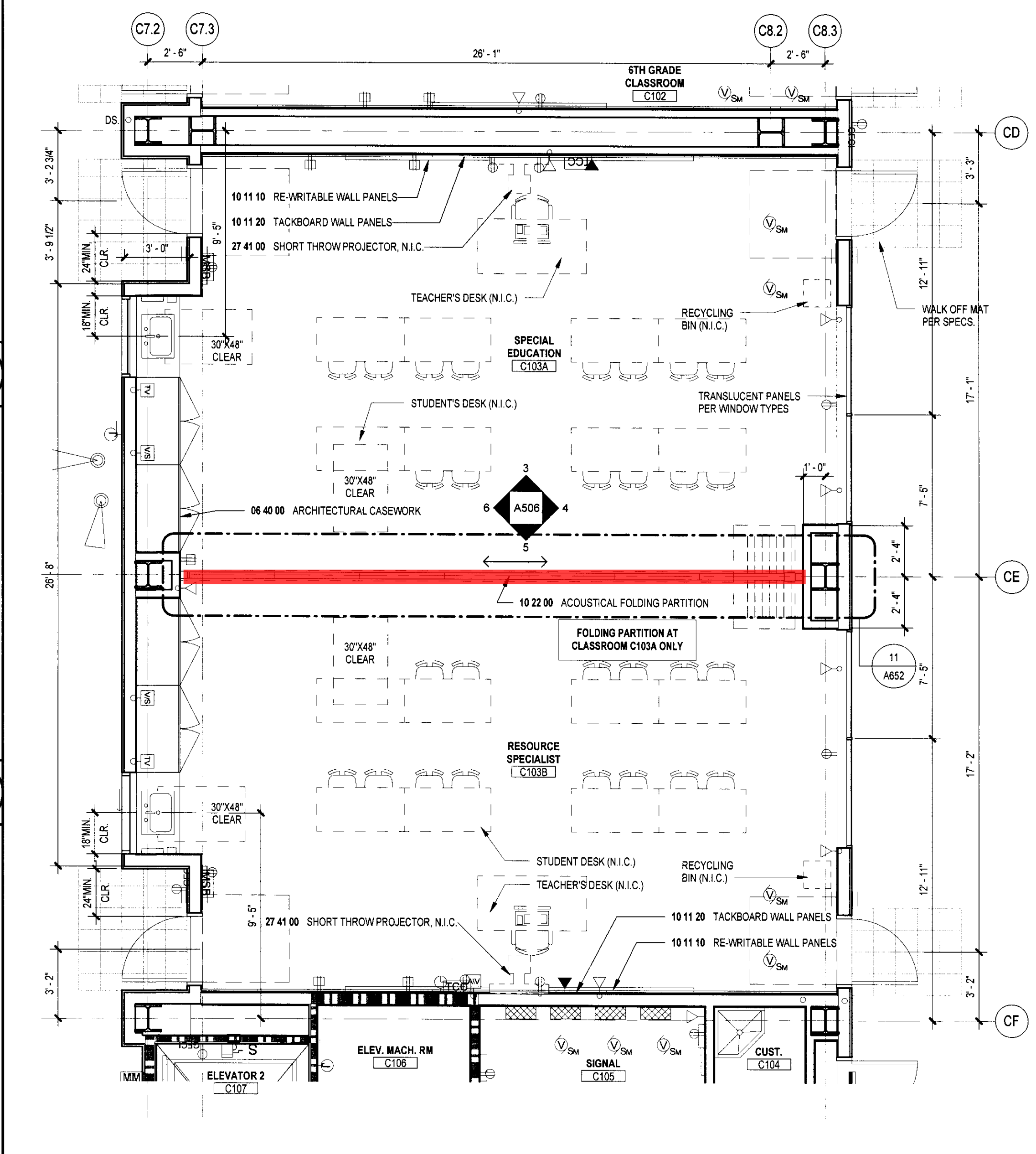
**SPECIAL EDUCATION / RESOURCE SPECIALIST C103 EAST**  
1/4" = 1'-0" **4**



**SPECIAL EDUCATION / RESOURCE SPECIALIST C103 NORTH**  
1/4" = 1'-0" **3**



**FLEXIBLE CLASSROOM C103 ENLARGED RCP**  
1/4" = 1'-0" **2**



**FLEXIBLE CLASSROOM C103 ENLARGED PLAN**  
1/4" = 1'-0" **1**

COPYRIGHT 2013  
No part of the contents of this document may be reproduced or transmitted in any form or by any means without the written permission of gkkworks.

IDENTIFICATION STAMP  
DIV. OF STATE ARCHITECT  
APP. 03-119857  
AC. [Signature] FLS. [Signature] SS. [Signature]  
DATE: MAR 1 0 2015



**BID FORM**

**FOR**

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL at  
BERENDO MIDDLE SCHOOL**

**1157 S Berendo St, Los Angeles, CA 90006**

**Bid No. MORCS01**

**FOR**

YPI Charter Schools, Inc., as the operator of the Monseñor Oscar Romero Charter School

CONTRACTOR

NAME: Novus Commercial Interiors, Inc. DBA: Novus Construction

ADDRESS: 9205 Alabama Avenue, Suite F

Chatsworth, CA 91311

TELEPHONE: ( 818 ) 700-2649

FAX: ( 818 ) 700-0702

EMAIL jason@novusconstruction.com

TO: YPI Charter Schools, Inc. as the operator of the Monseñor Oscar Romero Charter School acting by and through its Board of Directors, hereinafter referred to as "Developer",

1. Pursuant to and in compliance with your Notice Inviting Bids and other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the Contract, the local conditions affecting the performance of the Contract, the cost of the work at the place where the work is to be done, with the Drawings and Specifications, and other Contract Documents, hereby proposes and agrees to perform within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, including its acceptance by the Developer, and to provide and furnish any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to perform the Contract and complete all of the Work in a workmanlike manner required in connection with the construction of:

**BID SCHEDULE NO. MORCS01**

Monseñor Oscar Romero Charter School

in the Developer described above, all in strict conformance with the drawings and other Contract Documents on file at ARC Document Solutions, the reprographics vendor of said Developer for amounts set forth herein.

2. BIDDER ACKNOWLEDGES THE FOLLOWING ADDENDUM:

Number	Number	Number	Number	Number	Number	Number	Number
<u>1</u>	<u>2</u>	<u>3</u>	_____	_____	_____	_____	_____

Acknowledge the inclusion of all addenda issued prior to bid in the blanks provided above. Your failure to do so may render your bid non-responsive.

3. TOTAL CASH PURCHASE PRICE IN WORDS & NUMBERS:

Twenty one million five hundred <sup>thousand</sup> ~~million~~ ninety-nine thousand DOLLARS  
 (\$ 21,599,000.00 )

4. ALTERNATE BIDS: The following amounts shall be added to or deducted from the Base Bid at the Developer's option. Alternates are fully described in the Specifications.

- Alternate No. 1: ADD  DEDUCT  Twenty five thousand Dollars (~~\$25,000.00~~)
- Alternate No. 2: ADD  DEDUCT  Thirty thousand Dollars (~~\$30,000.00~~)
- Alternate No. 3: ADD  DEDUCT  Eighteen thousand three hundred Dollars (~~\$18,300.00~~ <sup>18,300.00</sup> JP #)
- Alternate No. 4: ADD  DEDUCT  Two hundred twenty-five thousand two hundred forty-four Dollars (~~\$225,244.00~~)
- Alternate No. 5: ADD  DEDUCT  twentt eight thousand nine hundred Dollars (~~\$28,900.00~~ <sup>28,900.00</sup> JP #)

5. **TIME FOR COMPLETION:** The Developer may give a notice to proceed within ninety (90) days of the award of the bid by the Developer. Once the Contractor has received the notice to proceed, the Contractor shall complete the work in the time specified in the Agreement. By submitting this bid, Contractor has thoroughly studied this Project and agrees that the Contract Time for this Project is adequate for the timely and proper completion of the Project. Further, Contractor has included in the analysis of the time required for this Project, Rain Days, Governmental Delays, and the requisite time to complete Punch List.

In the event that the Developer desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the Developer. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause a hardship to it, the Contractor may terminate the contract with written notice to the Developer within ten (10) days after receipt by the Contractor of the Developer's notice of postponement. Should the Contractor terminate the Contract as a result of a notice of postponement, the Developer shall have the authority to award the Contract to the next lowest responsible bidder, if applicable.

It is understood that the Developer reserves the right to reject any or all bids and/or waive any irregularities or informalities in this bid or in the bid process. The Contractor understands that it may not withdraw this bid for a period of ninety (90) days after the date set for the opening of bids.

6. Attached is bid security in the amount of not less than ten percent (10%) of the bid:

Bid bond (10% of the Bid), certified check, or cashier's check (circle one)

7. The required List of Designated Subcontractors is attached hereto.

8. The required Non-Collusion Declaration is attached hereto.

9. The Substitution Request Form, if applicable, is attached hereto.

10. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the Developer a Contract in the form attached hereto in accordance with the bid as accepted, and that he or she will also furnish and deliver to the Developer the Performance Bond and Payment Bond, all within forty five (45) calendar days after award of Contract, and that the work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, by the start date provided in the Developer's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents.

11. The names of all persons interested in the foregoing proposal as principals are as follows:

Patricia A. Strauss - President/Treasurer

Jason P. Hama - Vice President/Secretary

---

---

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state the legal name of such corporation, as well as the names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state the true names of the firm, as well as the names of all individual co-partners comprising the firm; if bidder or other interested person is an individual, state the first and last names in full.)

12. PROTEST PROCEDURES. If there is a bid protest, the grounds shall be submitted as set forth in the Instructions to Bidders.

13. The undersigned bidder shall be licensed and shall provide the following California Contractor's license information:

License Number: 528475

License Expiration Date: April 30, 2016

Name on License: Novus Commercial Interiors, Inc.  
DBA: Novus Construction

Class of License: B, C-9

DIR Registration Number: 1000000684

If the bidder is a joint venture, each member of the joint venture must include the above information.

14. Time is of the essence regarding this Contract, therefore, in the event the bidder to whom the Contract is awarded fails or refuses to post the required bonds and return executed copies of the Agreement form within forty five (45) calendar days from the date of receiving the Notice of Award, the Developer may declare the bidder's bid deposit or bond forfeited as damages.

15. The bidder declares that he/she has carefully examined the location of the proposed Project, that he/she has examined the Contract Documents, including the Plans, General Conditions, Supplemental Conditions, Addenda, and Specifications, all others documents and requirements that are attached to and/or contained in the Project Manual, all other documents issued to bidders and read the accompanying instructions to bidders, and hereby proposes and agrees, if this proposal is accepted, to furnish all materials and do all work required to complete the said work in accordance with the Contract Documents, in the time and manner therein prescribed for the unit cost and lump sum amounts set forth in this Bid Form.

16. DEBARMENT. In addition to seeking remedies for False Claims under Government Code section 12650 et seq. and Penal Code section 72, the Developer may debar a Contractor pursuant to Article 15 of the General Conditions if the Board, or the Board may designate a hearing officer who, in his or her discretion, finds the Contractor has done any of the following:

a. Intentionally or with reckless disregard, violated any term of a contract with the Developer;



b. Committed an act or omission which reflects on the Contractor's quality, fitness or capacity to perform work for the Developer;

c. Committed an act or offense which indicates a lack of business integrity or business honesty; or

d. Made or submitted a false claim against the Developer or any other public entity. (See Government Code section 12650, et seq., and Penal Code section 72)

17. DESIGNATION OF SUBCONTRACTORS. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.) and any amendments thereof, each bidder shall list subcontractors on the Developer's form Subcontractor list. This subcontractor list shall be submitted with the bid and is a required form

I agree to receive service of notices at the e-mail address listed below.

I the below-indicated bidder, declare under penalty of perjury that the information provided and representations made in this bid are true and correct.

Novus Commercial Interiors, Inc. DBA: Novus Construction  
Proper Name of Company

Jason Hama  
Name of Bidder Representative

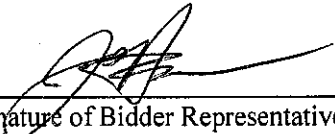
9205 Alabama Avenue, Suite F  
Street Address

Chatsworth, CA 91311  
City, State, and Zip

( 818 ) 700-2649  
Phone Number

( 818 ) 700-0702  
Fax Number

jason@novusconstruction.com  
E-Mail

By:  Date: October 14, 2016  
Signature of Bidder Representative

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or

partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.

All signatures must be made in permanent blue ink.

**Addendum No. 2 to  
Bidding Documents for the Monseñor Oscar Romero Charter School Project  
Bid No. MORCS01  
Date: October 3, 2016**

**NOTICE TO BIDDERS:** The following additions and revisions have been made to the Bidding Documents for the Monseñor Oscar Romero Charter School Project Bid No. MORCS01 (“Bidding Documents”). In case of a conflict between the Bidding Documents and this Addendum, this Addendum shall govern.

1. In the **Notice Inviting Bids** Section, insert the following at the end of the Section:

“Bidders must comply with the Department of Industrial Relations (DIR) registration requirements and prevailing wage requirements, as more fully set forth in Attachment “B” which is incorporated herein by this reference.”

2. In Section 1.1.29 of the **General Conditions**, add the following sentence after the first sentence:

“A copy of the DIR Final Approval letter is attached as Attachment “C” and incorporated herein by this reference.”

3. In the **Agreement Form**, delete Article 7 in its entirety and replace with the following:

**“ARTICLE 7 COMPONENT PARTS OF THE CONTRACT:**  
The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Notice Inviting Bids  
Instructions to Bidders  
Designation of Subcontractors  
Non-Collusion Declaration  
Bid Guarantee Form  
Bid Bond  
Bid Form  
Contractor’s Certificate Regarding Worker’s Compensation  
Contractor’s Acknowledgment of the LAUSD’s Liability  
Acknowledgment of Bidding Practices Regarding Indemnity  
DVBE Participation Statement and Close-Out Forms  
Agreement Form  
Payment Bond  
Performance Bond  
Dual Oblige Rider to Performance Bond  
Guarantee  
Escrow Agreement for Security Deposit In Lieu of Retention

Contractor's Certification Regarding Background Checks  
Workers' Compensation/Employers Liability Endorsement  
General Liability Endorsement  
Automobile Liability Endorsement  
Contractor's Certificate Regarding Drug-Free Workplace  
Contractor's Certificate Regarding Alcohol and Tobacco  
Contractor's Certificate Regarding Background Checks  
General Conditions  
LAUSD's Project Stabilization Agreement for New School  
Construction and Major Rehabilitation  
Letter of Assent  
LAUSD's Labor Compliance Program Inclusive of all Forms,  
Terms and Conditions  
LAUSD Prequalification Program Inclusive of all Forms, Terms  
and Conditions  
Supplementary and Special Conditions  
Specifications  
General Conditions for LAUSD Labor Compliance Enforcement  
(Attachment "D")  
All Addenda as Issued  
Drawings/Plans  
Substitution Request Form  
Requirements, Reports and/or Documents in the Project Manual or  
Other Documents Issued to Bidders

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.



**ATTACHMENT “B”**

**Bid Language for LAUSD DIR Registration and Labor Compliance Enforcement**

**(Attached)**

## INVITATION TO BID LANGUAGE

### 1. PUBLIC WORKS REGISTRATION

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the DIR and the Los Angeles Unified School District's DIR-approved Labor Compliance Program (Final Approval, December 27, 1996).

### 2. PREVAILING WAGES

In accordance with California Labor Code sections 1771, 1771.4, 1771.5, 1774, 1815 and Title 8 California Code of Regulations 16433, the Los Angeles Unified School District (LAUSD) operates an approved Labor Compliance Program, which shall be enforcing prevailing wage requirements on this public works project. Any Contractor to whom a contract for the work is awarded by the Owner shall comply with the provisions of the California Labor Code, as well as the LAUSD's Labor Compliance Program for the Project, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the Work is to be performed in accordance with, without limitation, Sections 1771, 1773.1, 1774, 1775, 1776 and 1813 of the California Labor Code and the obligation to comply with Section 1777.5 of the California Labor Code governing employment of apprentices.

- A. In compliance with provisions of the California Labor Code, all workers employed by bidder or any bidder subcontractor in the execution of work shall be paid not less than the general prevailing rate of per diem wages, including payment for travel and subsistence; and not less than the general prevailing rate of per diem wages for holiday and overtime work, as determined by the California State Director of Industrial Relations for each craft, classification or type of worker needed to execute the work.
- B. Information on the prevailing rate of per diem wages, the LAUSD Labor Compliance Program, or for questions or assistance, contact the Labor Compliance Department at (213) 241-4665 or [lcp@lausd.net](mailto:lcp@lausd.net), or visit [www.laschools.org/lcp](http://www.laschools.org/lcp).

Copies of the prevailing rate of per diem wages are available to any interested party at [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr). Alternatively, they are also on file in the following LAUSD Labor Compliance Department and shall be made available to an interested party on request:

Labor Compliance Department	or	DLSR
333 S. Beaudry Ave, 21st Floor		P.O. Box 420603
Los Angeles, CA 90017		San Francisco, CA 94142
(213) 241-4665		(415) 703-4780
<a href="mailto:lcp@lausd.net">lcp@lausd.net</a>		<a href="http://www.dir.ca.gov/DLSR/">www.dir.ca.gov/DLSR/</a>

- C. Bidder certifies that it will submit the certified payroll records of Bidder and all subcontractors, of any tier, including Non-Performance payroll records, on a weekly basis

to the LAUSD Labor Compliance Department in the method provided by the LAUSD Web-based Certified Payroll Reporting System.

- D. Bidder certifies that its bid amount includes funds sufficient to allow Bidder to comply with all applicable local, state and federal laws and regulations governing the labor and services to be provided for the performance of the work of the Contract and shall indemnify, defend and hold District harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to Bidder's failure to comply with applicable law in this regard.

**ATTACHMENT “C”**

**Notice of Labor Compliance Program Approval**

**(Attached)**



STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF THE DIRECTOR  
45 Fremont Street, 32nd Floor  
San Francisco, CA 94105



December 11, 1996

Kirk C. Rascoe  
Director  
Equal Opportunity Section  
Los Angeles Unified School District  
P. O. Box S, Grand Avenue, Suite 1125  
Los Angeles, CA 90071

Re: Labor Compliance Program


Dear Mr. Rascoe:

This is to inform you that your request for final approval of your Labor Compliance Program (LCP) is hereby granted effective December 27, 1996 pursuant to California Code of Regulations (CCR) Section 16427. As provided in this regulation, you are to enter into an agreement with the State Labor Commissioner to provide for a procedure for securing approval of forfeitures. You are also required to submit an annual report on the operation of your LCP as outlined in CCR Section 16431 within 60 days after the close of your fiscal year (July 1).

Congratulations on what appears to be a successful LCP.

If you have any questions, please contact Assistant State Labor Commissioner, Nance Steffen at (415) 975-2080.

Very truly yours,

  
John C. Duncan  
Chief Deputy Director

cc: Roberta Mendonca  
Nance Steffen

96 DEC 23 PM 12: 56  
AFFIRMATION  
PROGRAMS SECT.

**ATTACHMENT “D”**

**General Conditions for LAUSD Labor Compliance Enforcement**

**(Attached)**

## **General Conditions for LAUSD Labor Compliance Enforcement**

### ***Prevailing Wages:***

#### **Labor Compliance Program**

- A.** CONTRACTOR/FIRM and all Subcontractors must comply with the Los Angeles Unified School District (“LAUSD”) Labor Compliance Program (“LCP”) requirements, including, but not limited to, all applicable statutes and regulations, LAUSD LCP’s LCP Manual, and OWNER’s Contract requirements. In the event that additional or revised information is required pursuant to enforcement of the LCP, such requirement shall not result in an increase to the Contract Time or the Contract Amount. CONTRACTOR/FIRM will be responsible for all failures by all Subcontractors to comply with LAUSD’s LCP requirements. CONTRACTOR/FIRM, consistent with California Public Contract Code section 6109, is prohibited from performing a portion of work with a Subcontractor who is debarred pursuant to Sections 1777.1 or 1777.7 of the Labor Code.
- B. Notice of LCP Approval:**
- LAUSD’s LCP was granted final approval/extended authority by the Department of Industrial Relations on December 27, 1996. For questions and assistance, please contact the LAUSD LCP Office at (213) 241-4665, [lcp@lausd.net](mailto:lcp@lausd.net), or at [www.laschools.org](http://www.laschools.org) on the web.
- C.** CONTRACTOR/FIRM and all Subcontractors must send an authorized representative responsible for LCP compliance to the first available Labor Compliance Certification Training class following contract award. If a CONTRACTOR/FIRM or Subcontractor has already attended LAUSD’s Labor Compliance Certification Training class less than one (1) year before contract award on the Project, it does not have to retake the Labor Compliance Certification Training Class. A representative responsible for LCP compliance for CONTRACTOR/FIRM and each Subcontractor must take the online Labor Compliance Recertification class within one (1) year after taking the Labor Compliance Certification Training class.

#### **Prevailing Wages**

- A.** This Project is a public works project, as defined in Labor Code section 1720, and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations (CCR) sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects.

**B. Payment of Prevailing Wages**

In accordance with Labor Code sections 1720, 1771, 1771.5, 1774, and 1815 and Title 8 CCR section 16433, LAUSD LCP and OWNER require

the payment of prevailing wages for all publicly-funded projects over one thousand dollars (\$1,000) where LAUSD is not the Awarding Body. This applies to publicly funded projects, including, but not limited to, projects for construction, installation work, alteration, demolition, repair, warranty or maintenance work.

- C.** Pursuant to Labor Code sections 1770 et seq., LAUSD has obtained from the Department of Industrial Relations determinations of the prevailing wage rates and the prevailing wage rates for holiday and overtime work for Los Angeles County where the Project is to be performed. Copies of these prevailing wage rates are on file and available to any interested party upon request at the LAUSD LCP's office and the following websites: [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr/pwd](http://www.dir.ca.gov/dlsr/pwd).
- D.** Questions pertaining to prevailing wage rates should be directed to the LAUSD Labor Compliance Department or to the Division of Labor Statistics and Research at the following respective addresses:

Labor Compliance Department	or	DLSR
333 S. Beaudry Ave, 21 <sup>st</sup> Floor		P.O. Box 420603
Los Angeles, CA 90017		San Francisco, CA 94142
(213) 241-4665		(415) 703-4780
<a href="mailto:lcp@lausd.net">lcp@lausd.net</a>		<a href="http://www.dir.ca.gov/DLSR/">www.dir.ca.gov/DLSR/</a>

- E.** CONTRACTOR/FIRM shall post at appropriate and conspicuous locations on the Project site the following:
- 1.** A schedule showing all applicable prevailing wage rates in accordance with Labor Code section 1773.2; and
  - 2.** Notice of LAUSD LCP approval sufficient to satisfy Title 8 CCR section 16429 (Attachment A to the MOU between LAUSD and OWNER).
  - 3.** Notice of Project Subject to Monitoring by LAUSD LCP sufficient to satisfy Title 8 CCR section 16451(d) (Attachment D to the MOU between LAUSD and OWNER).
- F.** CONTRACTOR/FIRM and all Subcontractors must provide itemized wage statements to their employees in accordance with Labor Code section 226.
- G.** CONTRACTOR/FIRM represents and warrants that the Contract Amount includes sufficient funds to allow CONTRACTOR/FIRM and all Subcontractors to comply with all applicable laws and contractual agreements. CONTRACTOR/FIRM shall defend, indemnify and hold OWNER, LAUSD, and LAUSD LCP harmless from and against any and all claims, demands, losses, liabilities and damages arising out of or relating to the failure of CONTRACTOR/FIRM or any Subcontractor to comply with any applicable law in this regard, including, but not limited



to Labor Code section 2810. CONTRACTOR/FIRM agrees to pay any and all assessments, including wages, penalties and liquidated damages, made against OWNER, LAUSD and LAUSD LCP in relation to such failure.

- H.** Failure to comply with the payment of prevailing wages shall result in a penalty to the LAUSD pursuant to Labor Code section 1775 and applicable regulations, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate for the work or craft in which such worker is employed by the CONTRACTOR/FIRM or Subcontractor. This includes, but is not limited to, the failure to pay applicable shift differential rates.
- I.** The CONTRACTOR/FIRM and the bond insurer will be jointly and severally liable for the back wages, penalties, and/or Labor Code Liquidated Damages due as a result of a prevailing wage violation. "Labor Code Liquidated Damages" are equal to the total underpayment of wages remaining unpaid sixty (60) days after service of the Notice of Withholding of Contract Payments pursuant to Labor Code section 1742.1. The underpaid employee will receive both the Labor Code Liquidated Damages and the underpayment amount.
- J.** Pursuant to Labor Code section 1778, every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

### **Apprentices**

- A.** CONTRACTOR/FIRM and all Subcontractors shall comply with all requirements in Labor Code section 1777.5 and Title 8 CCR sections 200 et seq. CONTRACTOR/FIRM is responsible for compliance with Labor Code section 1777.5 for all apprenticeable crafts or trades. CONTRACTOR/FIRM and any Subcontractor(s) who fail to comply with Labor Code section 1777.5 shall be subject to the penalties specified in Labor Code section 1777.7.
- B.** CONTRACTOR/FIRM and all Subcontractors shall submit contract award information using the Division of Apprenticeship Standards (DAS 140) Form to the applicable apprenticeship committee within ten (10) days of the date of execution of contract and no later than the first day of work in accordance with Title 8 CCR section 230. CONTRACTOR/FIRM shall simultaneously submit a copy of the completed DAS 140 Form to the LAUSD's Labor Compliance Department in the method provided by LAUSD's Online Certified Payroll Reporting System.

### **Working Hours**

**A.** CONTRACTOR/FIRM and all Subcontractors shall comply with the following provisions for working hours:

1. Pursuant to Labor Code section 1810, eight (8) hours labor shall constitute a legal day's work.
2. Pursuant to Labor Code section 1811, the time of service of any worker employed at any time by CONTRACTOR/FIRM or any Subcontractor is limited and restricted to eight (8) hours during any one day and forty (40) hours during any one week, except as otherwise provided by law.
3. Notwithstanding the foregoing provisions, work performed in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours per week at not less than one and one-half (1 ½) times the basic rate of pay, or as otherwise required by law. All work performed on Saturday, Sunday, and/or holidays shall be paid pursuant to the Prevailing Wage Determination.
4. Unless otherwise prescribed by law, where a single shift is worked, eight (8) consecutive hours between 7 AM and 11:30 PM shall constitute a work day at the applicable prevailing wage rate(s) including but not limited to shift differential pay. Please contact the Department of Industrial Relations for shift differential pay requirements.
5. Unless otherwise prescribed by law, forty (40) hours between Monday 7 AM and Friday 11:30 PM shall constitute a workweek at the applicable prevailing wage rate(s), including but not limited to shift differential pay requirements
6. The LAUSD's Labor Compliance Department audit and investigation uses the working hours contained in the preceding sections and determines violations and penalties accordingly, unless evidence is found to the contrary or prescribed by law.
7. After the Effective Date of the Contract, the work day and workweek may only be modified as authorized in the contract. Any other Work performed by workers necessary to be performed outside of the work day and workweek shall be performed without adjustment to the Contract Amount or any other additional expense to the OWNER.

**B.** Failure to comply with the payment of overtime wages shall result in a penalty to the LAUSD pursuant to Labor Code section 1813 and applicable regulations, for each calendar day, or portion thereof, during which worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week without proper compensation in violation of Labor Code section 1810 *et seq.* and/or applicable regulations.

### **Certified Payroll Reporting Forms and Payroll Records**

- A.** CONTRACTOR/FIRM shall be responsible for the submission of electronic certified payroll records of CONTRACTOR/FIRM and all Subcontractors within ten (10) days of the week ending date of each week. CONTRACTOR/FIRM shall submit weekly electronic certified payroll records, including certified Non-Performance payroll records, in the method provided by the LAUSD's Web-based Certified Payroll Reporting System, to the LAUSD's Labor Compliance Program. When a Contract has various school projects, Certified Payroll Reporting Forms for each individual school shall be maintained and submitted in the method provided by LAUSD.
- B.** CONTRACTOR/FIRM must comply with all requirements of LAUSD's Web-based Certified Payroll Reporting System, including, but not limited to, electronic signature, electronic submittal of documents and forms, and use of other electronic modules. This obligation includes compliance with all existing requirements and all new requirements developed during the term of the Project.
- C.** CONTRACTOR/FIRM shall submit to LAUSD's Labor Compliance Department, an estimated start date for all Subcontractors, within five (5) days of the Subcontractor work start date and shall submit a revised estimate, if applicable, within five (5) days of knowledge of any changes to any estimated start date. This document must contain the name and address of each Subcontractor, each Subcontractor's contractor license number and the estimated start date.
- D.** CONTRACTOR/FIRM shall provide, and shall cause all Subcontractors to provide, "Payroll Records" to LAUSD, within ten (10) days of written request, at no cost to LAUSD and/or OWNER. "Payroll Records" are all un-redacted certified payroll records, time cards, sign-in sheets, daily construction reports, check stubs, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to the Project. All received documents will become property of LAUSD.
- E.** Failure to submit Payroll Records within ten (10) days of such due date shall result in a penalty to the LAUSD pursuant to Labor Code section 1776 and applicable regulations, until strict compliance is effectuated.

### **Withholding of Contract Payments**

- A.** LAUSD will assess and OWNER will withhold payment from CONTRACTOR/FIRM in accordance with its rights and obligations under Labor Code section 1720 et seq. and applicable regulations, including for back wages, penalties and Labor Code Liquidated Damages.

- B.** Notwithstanding any other provision in this contract, OWNER shall withhold payment from any portion of the Contract Amount then or thereafter due the CONTRACTOR/FIRM for violation by CONTRACTOR/FIRM or any Subcontractor of the requirements of these *General Conditions for LAUSD Labor Compliance Enforcement* or any of its subsections herein. Without limitation to the foregoing, payment shall not be made to the CONTRACTOR/FIRM when certified payroll records by CONTRACTOR/FIRM or any of its Subcontractors are delinquent or inadequate in accordance with Title 8 CCR section 16435.

#### **Incorporation by Reference**

- A.** All statutory Codes and Regulations cited in this contract are understood by the parties to be incorporated in full by the references to those statutes and regulations herein.

#### ***Public Works Contractor Registration:***

Pursuant to Labor Code section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5.

It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code, or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Labor Code section 1725.5 at the time the contract is awarded.



## AGREEMENT FORM

**THIS AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ in the County of Los Angeles of the State of California, by and between the YPI Charter Schools, Inc., as the operator of the Monseñor Oscar Romero Charter School, hereinafter called Developer”, and \_\_\_\_\_, hereinafter called the “Contractor”.

**WITNESSETH** that Developer and the Contractor for the consideration stated herein agree as follows:

**ARTICLE 1 - SCOPE OF WORK:** The Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required in connection with \_\_\_\_\_ (“Project”) in strict accordance with the Contract Documents enumerated in Article 7 below. The Contractor shall be liable to Developer for any damages arising as a result of a failure to comply with that obligation, and the Contractor shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, Division of the State Architect (DSA), or representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents, that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the Developer office within seven (7) days of the date of occurrence of such act or omission preventing the Contractor from fully complying with the Contract Documents.

**ARTICLE 2 - TIME OF COMPLETION:** Developer may give notice to proceed within ninety (90) days of the award of the bid by the Developer. Once the Contractor has received a notice to proceed, the Contractor shall reach Substantial Completion (See Article 1.1.46) of the Work within (\_\_\_\_\_) calendar days from receipt of the Notice to Proceed. This shall be called Contract Time. (See Article 8.1.1). It is expressly understood that time is of the essence.

Contractor has thoroughly studied the Project and has satisfied itself that the time period for this Project was adequate for the timely and proper completion of the Project within each milestone and within the Contract time. Further, Contractor has included in the analysis of the time required for this Project, items set forth in General Conditions Article 8.3.2.1, Submittal Schedules, Rain Day Float, and Governmental Delay Float.

In the event that the Developer desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the Developer. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the Developer’s postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause hardship to it, the Contractor may terminate the Contract with written notice to the Developer within ten (10) days after receipt by the Contractor of the Developer’s notice of postponement. It is further understood by the Contractor that in the event that the Contractor terminates the Contract as a result of postponement by the Developer, the Developer shall only be obligated to pay the Contractor for the work performed by the Contractor at the time of notification of postponement. Should the Contractor terminate the Contract as a result of a notice

of postponement, the Developer shall have the authority to award the Contract to the next lowest responsible bidder.

**ARTICLE 3 - LIQUIDATED DAMAGES:** It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the Developer the sum of Three-Thousand Dollars and 0/00 (\$3,000.00) per calendar day for each and every day of delay beyond the Contract Time set forth in Article 2 of this Agreement (inclusive of Milestones that are critical on the critical path or noted as critical to the Developer) as liquidated damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Contractor further agrees that the Developer may deduct such amount thereof from any money due or that may become due the Contractor under the Contract (See Article 9.6 and 2.2 of the General Conditions).

**ARTICLE 4 - CONTRACT PRICE:** The Developer shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), said sum being the total amount stipulated in the Bid Contractor submitted. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Contractor and the Developer, subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that the Contractor proceeds with a Change in work without an agreement between the Developer and Contractor regarding the cost of a Change Order, the Contractor waives any Claim of additional compensation for such additional work.

**ARTICLE 5 - HOLD HARMLESS AGREEMENT:** Contractor shall defend, indemnify and hold harmless Developer, LAUSD, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, Developer, LAUSD, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless Developer, LAUSD, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the Developer.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either

directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the Developer, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off Developer property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the Developer.

(c) Any dispute between Contractor and Contractor's subcontractors/supplies/ Sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Developer, its officers, agents or employees, and LAUSD on account of or founded upon any cause, damage, or injury identified herein Article 5 and shall pay or satisfy any judgment that may be rendered against the Developer, its officers, agents or employees and LAUSD in any action, suit or other proceedings as a result thereof.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the Developer, LAUSD, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA").

**ARTICLE 6 - PROVISIONS REQUIRED BY LAW:** Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT:** The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Notice Inviting Bids  
Instructions to Bidders  
Designation of Subcontractors  
Non-Collusion Declaration  
Bid Guarantee Form  
Bid Bond  
Bid Form  
Contractor's Certificate Regarding Worker's Compensation  
Contractor's Acknowledgment of the LAUSD's Liability  
Acknowledgment of Bidding Practices Regarding Indemnity  
DVBE Participation Statement and Close-Out Forms  
Agreement Form

Payment Bond  
Performance Bond  
Dual Obligee Rider to Performance Bond  
Guarantee  
Escrow Agreement for Security Deposit In Lieu of Retention  
Contractor's Certification Regarding Background Checks  
Workers' Compensation/Employers Liability Endorsement  
General Liability Endorsement  
Automobile Liability Endorsement  
Contractor's Certificate Regarding Drug-Free Workplace  
Contractor's Certificate Regarding Alcohol and Tobacco  
Contractor's Certificate Regarding Background Checks  
General Conditions  
LAUSD's Project Stabilization Agreement for New School Construction and Major Rehabilitation  
Letter of Assent  
LAUSD's Labor Compliance Program Inclusive of all Forms, Terms and Conditions  
LAUSD Prequalification Program Inclusive of all Forms, Terms and Conditions  
Supplementary and Special Conditions  
Technical Specifications (Volumes 1 and 2)  
All Addenda as Issued  
Drawings/Plans (Volumes 1 and 2)  
Substitution Request Form  
MORCS Final Initial Study/Mitigated Negative Declaration, By Impact Sciences, Inc, November, 2014  
Requirements, Reports and/or Documents in the Project Manual or Other Documents Issued to Bidders

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

**ARTICLE 8 - PREVAILING WAGES:** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the Developer and are also available from the Director of the Department of Industrial Relations. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

The following are hereby referenced and made a part of this Agreement and Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)
3. LAUSD's Project Stabilization Agreement for New School Construction and Major Rehabilitation.
4. LAUSD's Labor Compliance Program Inclusive of all Forms, Terms and Conditions.



**ARTICLE 9 - RECORD AUDIT:** In accordance with Government Code section 8546.7 (and Davis Bacon, if applicable) and Article 13.11 of the General Conditions, records of both the Developer and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

**ARTICLE 10 - CONTRACTOR'S LICENSE:** The Contractor must possess throughout the Project a Class B Contractor's License, issued by the State of California, which must be current and in good standing.

**ARTICLE 11 - CERTIFICATIONS:** Contractor shall execute and submit to the Developer all certifications and acknowledgements required by the Contract Documents.

**ARTICLE 12 - COLLATERAL ASSIGNMENT OF CONTRACT:** This Contract is hereby assigned to the LAUSD by Developer, provided that:

1. The assignment is effective only upon the uncured default of the Developer under the Development Agreement between the Developer and the LAUSD and only after the LAUSD has provided the Developer and Contractor with written notice of the Developer's failure to cure any default thereunder; and
2. The assignment is invoked by the LAUSD in writing.

If the LAUSD invokes the assignment of the Contract, the LAUSD assumes the Developer's rights and obligations under the Contract. The LAUSD has the right to invoke the assignment of the Contract, but not the obligation, in the event of a Developer default under the Development Agreement between the Developer and the LAUSD. The Developer, Contractor and the Contractor's Surety hereby consent to this contingent assignment without the payment of any fee whatsoever.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the above named parties, on the day and year first above written.

YPI Charter Schools, Inc.

**CONTRACTOR:**

By: \_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name

\_\_\_\_\_  
Title (Authorized Officers or Agents)

\_\_\_\_\_  
Signature

**(CORPORATE SEAL)**

**BIDDING DOCUMENTS**

**FOR**

**YPI CHARTER SCHOOLS, INC. AS THE OPERATOR OF THE  
MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

**FOR**

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

**AT**

**BERENDO MIDDLE SCHOOL**

**1157 S Berendo St, Los Angeles, CA 90006**

**DSA Application No. 03-115857**

**Bid No. MORCS01**

**YPI CHARTER SCHOOLS, INC.  
9400 Remick Ave, Los Angeles, CA 91331**

**September 12, 2016**

THIS PAGE INTENTIONALLY LEFT BLANK FOR PRINTING PURPOSES



NOTICE INVITING BIDS..... 1

INSTRUCTIONS TO BIDDERS ..... 7

CHECKLIST OF MANDATORY BID FORMS ..... 17

DESIGNATION OF SUBCONTRACTORS ..... 19

DESIGNATION OF SUBCONTRACTORS FORM ..... 20

BID FORM ..... 22

CONTRACTOR’S CERTIFICATE REGARDING WORKERS’ COMPENSATION FORM..... 27

CONTRACTOR’S ACKNOWLEDGMENT OF THE LAUSD’S LIABILITY ..... 28

NON-COLLUSION DECLARATION..... 29

BID GUARANTEE FORM..... 30

BID BOND FORM..... 31

REQUEST FOR SUBSTITUTION AT TIME OF BID ..... 34

ACKNOWLEDGMENT OF BIDDING PRACTICES REGARDING INDEMNITY FORM..... 36

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION STATEMENT ..... 37

CONTRACTOR’S CERTIFICATE REGARDING DRUG-FREE WORKPLACE..... 38

CONTRACTOR’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND TOBACCO-  
FREE CAMPUS POLICY ..... 39

AGREEMENT FORM..... 41

PAYMENT BOND..... 47

PERFORMANCE BOND..... 50

**DUAL OBLIGEE RIDER TO PERFORMANCE BOND ..... 54**

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION..... 58

INSURANCE DOCUMENTS & ENDORSEMENTS..... 61

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) CONTRACTOR CLOSE-OUT STATEMENT..... 63

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS ..... 64

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS ..... 65

ARTICLE 1 DEFINITIONS..... 66

    1.1 BASIC DEFINITIONS..... 66

    1.2 EXECUTION, CORRELATION AND INTENT ..... 72

    1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS..... 76

ARTICLE 2 Developer..... 77

    2.1 INFORMATION AND SERVICES REQUIRED OF THE DEVELOPER..... 77

    2.2 DEVELOPER’S RIGHT TO CARRY OUT THE WORK DUE TO PARTIAL DEFAULT IN A SPECIFIC SEGREGATED AREA OF WORK (48 HOUR NOTICE TO CURE AND CORRECT) ..... 80

ARTICLE 3 THE CONTRACTOR..... 82

    3.1 SUPERVISION AND CONSTRUCTION PROCEDURES ..... 82

    3.2 SUPERVISION ..... 83

    3.3 LABOR AND MATERIALS ..... 84

    3.4 WARRANTY ..... 87

    3.5 TAXES ..... 88

    3.6 PERMITS, FEES AND NOTICES..... 88

    3.7 SUBMITTALS REQUIRED AT THE COMMENCEMENT OF THE PROJECT ..... 89

    3.8 DOCUMENTS, SAMPLES, AND COMPUTER AT THE SITE..... 90

    3.9 SUBMITTALS INCLUDING SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES ..... 91

    3.10 SUBSTITUTIONS..... 97

    3.11 INTEGRATION OF WORK ..... 99

    3.12 CLEANING UP ..... 99

    3.13 ACCESS TO WORK..... 101

    3.14 ROYALTIES AND PATENTS ..... 101

    3.15 INDEMNIFICATION ..... 102

    3.16 SUBMISSION OF DAILY REPORTS ..... 102

    3.17 AS-BUILT DRAWINGS AND ANNOTATED SPECIFICATIONS..... 103

    3.18 EQUIPMENT MANUALS..... 104

    3.19 DIR REGISTRATION ..... 104

ARTICLE 4 ADMINISTRATION OF THE CONTRACT AND CLAIMS..... 106

4.1	ARCHITECT .....	106
4.2	ARCHITECT’S ADMINISTRATION OF THE CONTRACT.....	106
4.3	PROJECT INSPECTOR.....	108
4.4	STOP WORK ORDER.....	110
4.5	RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DEVELOPER FOR PROFESSIONAL SERVICES .....	110
4.6	DISPUTES AND CLAIMS .....	111
ARTICLE 5	SUBCONTRACTORS .....	119
5.1	DEFINITIONS.....	119
ARTICLE 6	CONSTRUCTION BY Developer OR BY SEPARATE CONTRACTORS.....	121
6.1	DEVELOPER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS .....	121
6.2	CONSTRUCTIVE OWNERSHIP OF PROJECT SITE AND MATERIAL .....	123
6.3	DEVELOPER’S RIGHT TO CLEAN UP.....	123
ARTICLE 7	CHANGES IN THE WORK .....	124
7.1	CHANGES.....	124
7.2	CHANGE ORDERS (“CO”) .....	125
7.3	CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD) .....	125
7.4	REQUEST FOR INFORMATION (“RFI”) .....	127
7.5	REQUEST FOR PROPOSAL (“RFP”).....	128
7.6	CHANGE ORDER REQUEST (“COR”).....	128
7.7	COST OF CHANGE ORDERS.....	128
ARTICLE 8	TIME AND SCHEDULE .....	135
8.1	DEFINITIONS.....	135
8.2	HOURS OF WORK.....	137
8.3	PROGRESS AND COMPLETION.....	137
8.4	EXTENSIONS OF TIME - LIQUIDATED DAMAGES.....	141
ARTICLE 9	PAYMENTS AND COMPLETION.....	145
9.1	CONTRACT SUM .....	145
9.2	COST BREAKDOWN .....	145
9.3	PROGRESS PAYMENTS.....	146
9.4	APPLICATIONS FOR PROGRESS PAYMENTS.....	148
9.5	STOP NOTICE CLAIMS AND WARRANTY OF TITLE .....	150
9.6	DECISIONS TO WITHHOLD PAYMENT.....	151
9.7	NONCONFORMING WORK.....	153
9.8	SUBCONTRACTOR PAYMENTS .....	153
9.9	COMPLETION OF THE WORK.....	154
9.10	PARTIAL OCCUPANCY OR USE.....	158
9.11	COMPLETION AND FINAL PAYMENT .....	159
9.12	SUBSTITUTION OF SECURITIES .....	162
ARTICLE 10	PROTECTION OF PERSONS AND PROPERTY .....	163

10.1 SAFETY PRECAUTIONS AND PROGRAMS ..... 163

10.2 SAFETY OF PERSONS AND PROPERTY ..... 165

10.3 EMERGENCIES ..... 168

10.4 HAZARDOUS MATERIALS..... 168

ARTICLE 11 INSURANCE AND BONDS ..... 170

11.1 CONTRACTOR’S LIABILITY INSURANCE ..... 170

11.2 WORKERS’ COMPENSATION INSURANCE..... 172

11.3 BUILDER’S RISK/ “ALL RISK” INSURANCE ..... 172

11.4 FIRE INSURANCE..... 173

11.5 AUTOMOBILE LIABILITY ..... 173

11.6 OTHER INSURANCE ..... 173

11.7 PROOF OF INSURANCE..... 173

11.8 COMPLIANCE ..... 174

11.9 WAIVER OF SUBROGATION..... 174

11.10 PERFORMANCE AND PAYMENT BONDS..... 174

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK..... 176

12.1 COMPLIANCE WITH TITLE 24 INSTALLATION REQUIREMENTS ..... 176

12.2 SPECIAL NOTICE OF AMERICAN’S WITH DISABILITIES ACT ..... 176

12.3 UNCOVERING OF WORK..... 177

12.4 CORRECTION OF WORK..... 177

ARTICLE 13 MISCELLANEOUS PROVISIONS..... 179

13.1 GOVERNING LAW..... 179

13.2 SUCCESSORS AND ASSIGNS ..... 179

13.3 WRITTEN NOTICE..... 179

13.4 RIGHTS AND REMEDIES ..... 179

13.5 TESTS AND INSPECTIONS..... 179

13.6 TRENCH EXCAVATION ..... 180

13.7 WAGE RATES, TRAVEL, AND SUBSISTENCE ..... 181

13.8 RECORDS OF WAGES PAID ..... 184

13.9 APPRENTICES ..... 187

13.10 ASSIGNMENT OF ANTITRUST CLAIMS ..... 188

13.11 STATE AND DEVELOPER CONDUCTED AUDITS..... 189

13.12 STORM WATER POLLUTION PREVENTION ..... 190

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT..... 195

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE..... 195

14.2 TERMINATION BY THE DEVELOPER FOR CAUSE ..... 195

14.3 TERMINATION OF CONTRACT BY DEVELOPER (CONTRACTOR NOT AT  
FAULT) ..... 197

14.4 REMEDIES OTHER THAN TERMINATION ..... 197

ARTICLE 15 DEBARMENT..... 199

15.1 DEBARMENT MEANS THERE HAS BEEN A FINDING THAT THE  
CONTRACTOR IS NOT RESPONSIBLE. .... 199



15.2 BOARD FINDING ..... 199  
15.3 HEARING AND PRESENTATION OF EVIDENCE ..... 199

## **NOTICE INVITING BIDS**

### **YPI CHARTER SCHOOLS, INC.**

NOTICE IS HEREBY GIVEN that YPI Charter Schools, Inc. as the operator of the Monseñor Oscar Romero Charter School, acting by and through its Board of Directors, hereinafter referred to as “Developer”, will receive prior to **2:00PM on the 14th day of October, 2016** sealed bids for the award of a Contract for the following:

BID NO. MORCS01

### **MONSEÑOR OSCAR ROMERO CHARTER SCHOOL**

The Los Angeles Unified School District (“LAUSD”) is the owner of that certain real property at 1157 S. Berendo Street, City of Los Angeles, County of Los Angeles, State of California (“Property”) and has agreed to lease the Property to Developer pursuant to that certain “Charter School Lease and Joint Use Agreement.” The Project shall be completed pursuant to that certain “Development Agreement” between Developer and LAUSD.

All bids shall be made and presented only on the forms presented by the Developer. Bids shall be received in the offices of Pacific Charter School Development at 600 Wilshire Blvd., Suite 200, Los Angeles, California 90017 and shall be opened and publicly read aloud at the above stated time and place. Any bids received after the time specified above or after any extensions due to material changes shall be returned unopened.

The Contract Time is **(585) Five hundred eighty five** days.

CONTRACTOR should consult the General Conditions, Supplementary Conditions, and General Requirements regarding Milestones and Liquidated Damages.

### **Prequalification of Bidders**

This Project is being completed in accordance with the Development Agreement between the Developer and LAUSD and, as such, the Project must be completed in accordance with the terms and conditions agreed upon between the Developer and LAUSD. As a condition of bidding for this Project, and in accordance with California Public Contract Code section 20111.5 and 20111.6, prospective bidders are required to submit to LAUSD a completed set of prequalification documents on forms provided by LAUSD, available on LAUSD’s website at the following address: <http://www.laschools.org/new-site/prequalification/>. These documents will be the basis for determining which bidders are qualified to bid on this Project.

All Prime Contract bidders must be pre-qualified by the LAUSD, Facilities Service Division. Additionally, the following subcontractor trades must be prequalified by LAUSD under their Subcontractor Prequalification Program:

- C-4 Boiler, Hot Water Heating and Steam Fitting Contractor
- C-7 Low Voltage Systems Contractor
- C-10 Electrical Contractor
- C-16 Fire Protection Contractor
- C-20 Warm-Air Heating, Ventilating and Air-Conditioning Contractor
- C-34 Pipeline Contractor
- C-36 Plumbing Contractor
- C-38 Refrigeration Contractor
- C-42 Sanitation System Contractor
- C-43 Sheet Metal Contractor
- C-46 Solar Contractor

Prime Contractors and Subcontractors listed above wanting to provide bids on this Project that are not currently on the LAUSD prequalified lists must apply to the LAUSD for prequalification prior to submitting bids. Copies of the LAUSD's Prequalification requirements and forms are available to any interested bidder at <http://www.laschools.org/new-site/prequalification/>. Bids will not be accepted if a Contractor has not been prequalified with the LAUSD.

**Additive/ Deductive Bid Alternates (See Section 13 of Instruction to Bidders)**

If the Developer has included additive/ deductive alternates which require all bidders to price as part of their bid, the Developer will utilize the following method to determine the lowest bidder in accordance with Public Contract Code section 20103.8:

- X The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.
- The lowest bid shall be the lowest total of the bid prices on the base contract and the following additive or deductive items:
- The lowest bid shall be the lowest total of the bid prices on the base contract and the following additive or deductive items taken in order as listed below depending upon the available funds for this Project which is estimated at
  - 1.
- The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the Developer before the ranking of all bidders from

lowest to highest has been determined. The procedures the Developer will utilize to conceal the identity of any of the bidders will be as follows:

**\*\*Note:** Pursuant to Public Contract Code section 20103.8, the selection process selected does not preclude the Developer from using any of the additive or deductive alternates from the Contract after the lowest responsible responsive bidder has been determined.

### **Miscellaneous Information**

Bids shall be received in the place identified above, and shall be opened and publicly read aloud at the above-stated time and place.

The bid documents are available at:

**ARC Document Solutions**

934 W. Venice Blvd.  
Los Angeles, CA 90015  
213-745-3145

Project Access:

[www.crplanwell.com](http://www.crplanwell.com)

Public Planroom

Find: *Monsenor Oscar Romero Charter School*

There will be a non-refundable charge to purchase each set of bid documents. No partial sets will be available.

There will be a **mandatory Pre-Bid Conference at 10:00AM on September 22, 2016** in the auditorium at Berendo Middle School, 1157 S. Berendo Street, Los Angeles, CA 90006. Any Contractor bidding on the Project who fails to attend the entire mandatory job walk and conference will be deemed a non-responsive bidder and will have its bid returned unopened.

Each bidder shall be a licensed contractor pursuant to the California Business and Professions Code, and be licensed to perform the work called for in the Contract Documents. The successful bidder must possess a valid and active Class B License at the time of bid and throughout the duration of this Contract. The Contractor's California State License number shall be clearly stated on the bidder's proposal

Subcontractors shall be licensed pursuant to California law for the trades necessary to perform the Work called for in the Contract Documents.

Each bid must strictly conform with and be responsive to the Contract Documents as defined in the General Conditions.

The Developer reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.



Each bidder shall submit with its bid — on the form furnished with the Contract Documents — a list of the designated subcontractors on this Project as required by the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq.

In accordance with California Public Contract Code section 22300, the Developer will permit the substitution of securities for any moneys withheld by the Developer to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Developer, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

Each bidder's bid must be accompanied by one of the following forms of bidder's security: (1) cash; (2) a cashier's check made payable to the Developer; (3) a certified check made payable to the Developer; or (4) a bidder's bond executed by a California admitted surety as defined in Code of Civil Procedure section 995.120, made payable to the Developer in the form set forth in the Contract Documents. Such bidder's security must be in an amount not less than ten percent (10%) of the maximum amount of bid as a guarantee that the bidder will enter into the proposed Contract, if the same is awarded to such bidder, and will provide the required Performance and Payment Bonds, insurance certificates and any other required documents. In the event of failure to enter into said Contract or provide the necessary documents, said security will be forfeited.

The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. The Developer has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the Contract. These per diem rates, including holiday and overtime work, as well as employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the Developer, and are also available from the Director of the Department of Industrial Relations. Pursuant to California Labor Code section 1720 et seq., it shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under such Contractor, to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

As mentioned above, this Project is being completed in accordance with the Development Agreement between the Developer and LAUSD. To that end, the Project shall be subject to the LAUSD Project Stabilization Agreement for New School Construction and Major Rehabilitation (the "PSA") adopted by the LAUSD's Board of Education. All bidders are strongly urged to carefully review the PSA and its requirements on the LAUSD website (<http://www.laschools.org/new-site/project-stabilization/>) prior to submitting a bid.

Pursuant to Labor Code Section 1771.7 and the aforementioned Development Agreement, this Project will be subject to the LAUSD's approved Labor Compliance Program (Final Approval, December 27, 1996). For questions or assistance concerning the LAUSD Labor Compliance Program, contact the Labor Compliance Office at (213) 241-4665 or [lcp@lausd.net](mailto:lcp@lausd.net), or visit [www.laschools.org/lcp](http://www.laschools.org/lcp). Any Contractor to whom a Contract for the Work is awarded by the Developer shall comply with the provisions of the California Labor Code, as well as the LAUSD's Labor Compliance Program for the Project, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the Work is to be performed in accordance with, without limitation, Sections 1771, 1773.1, 1774, 1775, 1776 and 1813 of the California Labor Code and the obligation to comply with Section 1777.5 of the California Labor Code governing employment of apprentices. Copies of the

prevailing rates of per diem wages and the Labor Compliance Program requirements are available to any interested party at [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr)

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

The Contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the Developer or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

Separate payment and performance bonds, each in an amount equal to 100% of the total Contract amount, are required, and shall be provided to the Developer prior to execution of the Contract and shall be in the form set forth in the Contract Documents.

All bonds (Bid, Performance, and Payment) must be issued by a California admitted surety as defined in California Code of Civil Procedure section 995.120.

Where applicable, bidders must meet the requirements set forth in Public Contract Code section 10115 et seq., Military and Veterans Code section 999 et seq. and California Code of Regulations, Title 2, Section 1896.60 et seq. regarding Disabled Veteran Business Enterprise (“DVBE”) Programs. Forms are included in this Bid Package.

Any request for substitutions pursuant to Public Contract Code section 3400 must be made at the time of Bid on the Substitution Request Form set forth in the Contract Documents and included with the bid.

No telephone or facsimile machine will be available to bidders on the Developer premises at any time.

It is each bidder’s sole responsibility to ensure its bid is timely delivered and received at the location designated as specified above. Any bid received at the designated location after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

---

YPI Charter Schools, Inc.



## **INSTRUCTIONS TO BIDDERS**

1. **Preparation of Bid Form.** Proposals under these specifications shall be submitted on the blank forms furnished herewith at the time and place stated in the Notice Inviting Bids. All blanks in the bid form must be appropriately filled in, and all proposed prices must be stated clearly and legibly in both words and numerals. All bids must be signed by the bidder in permanent blue ink and submitted in sealed envelopes, bearing on the outside, the bidder's name, address, telephone number, and California Contractor's License number, and the name of the Project for which the bid is submitted. The Developer reserves the right to reject any bid if all of the above information is not furnished. It is each bidder's sole responsibility to ensure its bid is timely delivered and received at the location designated as specified above. Any bid received at the designated location after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.
  
2. **Bid Security.** Each bid must be accompanied by one of the following forms of bidder's security: (1) cash; (2) a cashier's check made payable to the Developer; (3) a certified check made payable to the Developer; or (4) a bidder's bond executed by a California admitted surety as defined in Code of Civil Procedure section 995.120, made payable to the Developer, in the form set forth in the Contract Documents. Such bidder's security must be in an amount not less than ten percent (10%) of the maximum amount of such bidder's bid as a guarantee that the bidder will enter into the Contract, if the same is awarded to such bidder, and will provide the required Performance and Payment Bonds, insurance certificates and any other required documents. In the event that a bidder is awarded the Contract and such bidder fails to enter into said Contract or provide the surety bond or bonds within five (5) calendar days after award of the Contract to bidder, said security will be forfeited.
  
3. **Signature.** The bid form, all bonds, all designations of subcontractors, the Contractor's Certificate, the Agreement, and all Guarantees must be signed in permanent blue ink in the name of the bidder and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

If bidder is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from the President and one from the Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed, if a certified copy of the resolution of the corporate board of directors authorizing them to do so is provided to the Developer. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal.

If bidder is a partnership, the true name of the firm shall first be set forth, together with the names of all persons comprising the partnership or co-partnership. The bid must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a statement of partnership acknowledging the signer to be a general partner is presented to the Developer, in which case the general partner may sign.

Bids submitted as joint ventures must so state and be signed by each joint venturer.

Bids submitted by individuals must be signed by the bidder unless an up to date power-of-attorney is on file in the Developer office, in which case, said person may sign for the individual.

The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where a fictitious name is used, it must be so indicated in the signature.



4. Modifications. Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in the Developer's rejection of the bid as not being responsive to the Notice Inviting Bids. **No oral or telephonic modification of any bid submitted will be considered.**

5. Erasures, Inconsistent or Illegible Bids. The bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the bid. In the event of inconsistency between words and figures in the bid price, words shall control figures. In the event that the Developer determines that any bid is unintelligible, inconsistent, or ambiguous, the Developer may reject such bid as not being responsive to the Notice Inviting Bids.

6. Examination of Site and Contract Documents. Each bidder shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction and labor so that the facilities, difficulties, and restrictions attending the execution of the work under the Contract are fully understood. Bidders shall thoroughly examine and be familiar with the drawings and specifications and all other documents and requirements that are attached to and/or contained in the Project Manual or other documents issued to bidders. The failure or omission of any bidder to receive or examine any Contract Documents, form, instrument, addendum, or other document or to visit the site and become acquainted with conditions there existing shall not relieve any bidder from obligations with respect to the bid or to the contract. The submission of a bid shall be taken as prima facie evidence of compliance with this Section. Bidders shall not, at any time after submission of the bid, dispute, complain, or assert that there were any misunderstandings with regard to the nature or amount of work to be done.

7. Withdrawal of Bids. Any bid may be withdrawn, either personally or by written request, at any time prior to the scheduled closing time for receipt of bids. The bid security for bids withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this paragraph, shall be returned upon demand therefor.

No bidder may withdraw any bid for a period of ninety (90) calendar days after the date set for the opening of bids.

8. Agreements, Insurance and Bonds. The Agreement form which the successful bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds and insurance endorsements which Contractor will be required to be furnished at the time of execution of the Agreement, are included in the bid documents and should be carefully examined by the bidder. The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond required is three (3). Payment and Performance bonds must be executed by an admitted surety insurer as defined in Code of Civil Procedure 995.120. The successful bidder shall execute a Performance Bond in favor of the Developer and shall also name LAUSD as a co-beneficiary under the Performance Bond using the Dual Oblige Rider to the Performance Bond form included in these bid documents.

9. Interpretation of Plans and Documents/Pre-Bid Clarification. If any prospective bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in, or omissions, a written request for an interpretation or correction thereof may be submitted to the Developer. The bidder submitting the request shall be responsible for its prompt delivery. **Any interpretation or correction of the Contract Documents will only be made by Addendum duly issued, and a copy of such Addendum will be made available for each contractor receiving a set of the Contract Documents.** No person is authorized to make any oral interpretation of any provision in the Contract

Documents, nor shall any oral interpretation be binding on the Developer. If discrepancies on drawings, specifications or elsewhere in the Contract Documents are not covered by addenda, bidder shall include in their bid methods of construction and materials for the higher quality and complete assembly. Each request for clarification shall be submitted in writing, via email, to only the following persons:

TO: Rick Shirley, Pre-construction Manager  
Richard.Shirley@arcadis.com  
CC: Vincent Petito  
vpetito@gkkworks.com

Each transmitted request shall contain the name of the person and/or firm filing the request, address, telephone, and fax number, Specifications and/or Drawing number. Bidder is responsible for the legibility of hand written requests. Pre-bid clarification request shall be filed a minimum of **eight (8)** days prior to bid opening. Requests received less than **eight (8)** days before bid opening shall not be considered or responded to. A written response to timely pre-bid clarifications requests which materially affects the bidders price will be made by Addendum issued by the Developer not less than seventy-two (72) hours prior to bid opening.

10. Bidders Interested in More Than One Bid. No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one prime bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a proposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a proposal or quoting prices to other bidders or making a prime proposal.

11. Award of Contract. The Contract will be awarded to the lowest responsive responsible bidder by action of the governing Board. The Developer reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. In the event an award is made to bidder, and such bidder fails or refuses to execute the Contract and provide the required documents within five (5) calendar days after award of the Contract to bidder, the Developer may award the Contract to the next lowest responsible and responsive bidder or release all bidders. **Each bid must conform and be responsive to the Contract Documents as defined in the General Conditions.**

12. Bid Protest Procedure. Any bidder may file a bid protest. The protest shall be filed in writing with the Developer's Pre-Construction Manager not more than five (5) business days after the date of the bid opening. An e-mail address shall be provided and by filing the protest, protesting bidder consents to receipt of e-mail notices for purposes of the protest and protest related questions and protest appeal, if applicable. The protest shall specify the reasons and facts upon which the protest is based.

a. Resolution of Bid Controversy: Once the bid protest is received, the apparent lowest responsible bidder will be notified of the protest and the evidence presented. If appropriate, the apparent low bidder will be given an opportunity to rebut the evidence and present evidence that the apparent low bidder should be allowed to perform the Work. If deemed appropriate by the Developer, an informal hearing will be held. Developer will issue a written decision within fifteen (15) calendar days of receipt of the protest, unless factors beyond the Developer's reasonable control prevent such resolution. The decision on the bid protest will be copied to all parties involved in the protest.

b. Appeal: If the protesting bidder or the apparent low bidder is not satisfied with the decision, the matter may be appealed to the Chief Operating Officer, or their designee, within three (3)

business days after receipt of the Developer's written decision on the bid protest. The appeal must be in writing and sent via overnight registered mail with all accompanying information relied upon for the appeal and an e-mail address from which questions and responses may be provided to:

**YPI Charter Schools, Inc.**

c/o Pacific Charter School Development  
600 Wilshire Blvd., Suite 200  
Los Angeles, CA 90017  
Attn: Hope Fang  
hope@pacificcharter.org

c. Appeal Review: The Chief Operating Officer or their designee shall review the decision on the bid protest from the Pre-Construction Manager and issue a written response to the appeal, or if appropriate, appoint a Hearing Office to conduct a hearing and issue a written decision. The written decision of the Chief Operating Officer or the Hearing Officer shall be rendered within fifteen (15) calendar days and shall state the basis for the decision. The decision concerning the appeal will be final and not subject to any further appeals.

d. Reservation of Rights to Proceed with Project Pending Appeal. The Developer reserves the right to proceed to award the Project and commence construction pending an Appeal. If there is State Funding or a critical completion deadline, the Developer may choose to shorten the time limits set forth in this Section if written notice is provided to the protesting party. E-mailed notice with a written confirmation sent by First Class Mail shall be sufficient to constitute written notice. If there is no written response to a written notice shortening time, the Developer may proceed with the award.

e. Finality. Failure to comply with this Bid Protest Procedure shall constitute a waiver of the right to protest and shall constitute a failure to exhaust the protesting bidder's administrative remedies.

13. Alternates. If alternate bids are called for, the Contract may be awarded at the election of the Governing Board to the lowest responsible and responsive bidder using the method and procedures outlined in the Notice Inviting Bids and as specified in the section entitled Alternate/Deductive Bid Alternates.

a. Subcontractor Listing for Alternates. If alternate bids are called for and the bidder intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate.

14. Evidence of Responsibility. Upon the request of the Developer, a bidder whose bid is under consideration for the award of the Contract shall submit promptly to the Developer satisfactory evidence showing the bidder's financial resources, surety and insurance claims experience, construction experience, completion ability, workload, organization available for the performance of the Contract, and other factors pertinent to a Project of the scope and complexity involved.

15. Listing Subcontractors. Each bidder shall submit with his bid, on the form furnished with the Contract Documents, a list of the names, license numbers, scopes of work, locations of the places of business, contact information, and Department of Industrial Relations ("DIR") registration numbers of each subcontractor who will perform work or labor or render service to the bidder in or about the project, or a subcontractor who under subcontract to the bidder, specially fabricates and installs a portion of the work, in an amount in excess of one-half of 1 percent of the bidder's total bid as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) Pursuant to

Labor Code section 1725.5, all subcontractors (of any tier) performing work on this Project must be properly registered with DIR.

16. Workers' Compensation. In accordance with the provisions of Labor Code section 3700, the successful bidder as the Contractor shall secure payment of compensation to all employees. The Contractor shall sign and file with the Developer the following certificate prior to performing the work under this contract: "I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." The form of such certificate is included as a part of the Bid Documents.

17. Contractor's License. To perform the work required by this notice, the Contractor must possess the Contractor's License as specified in the Notice Inviting Bids, and the Contractor must maintain the license throughout the duration of the contract. If, at the time of bid, bidder is not licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code for the State of California and the Notice to Contractors calling for bids, such bid will not be considered and the Contractor will forfeit its bid security to the Developer.

18. Anti-Discrimination. It is the policy of the Developer that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The Contractor agrees to comply with applicable federal and California laws, including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900 and Labor Code section 1735. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work by such Contractor.

19. Preference for Materials and Substitutions.

a. One Product Specified. Unless the Plans and Specifications state that no Substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, construction, or any specific name, make, trade name, or catalog number, with or without the words, "or equal," such specification shall be read as if the language "or equal" is incorporated.

b. Request for Substitution. Bidder may, unless otherwise stated, offer any material, process, article, etc., which is materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Document. If bidder desires to offer a Substitution for a Specified Item, such bidder must make a request in writing on the Developer's Substitution Request Form ("Request Form") and submit the completed Request Form with the bidder's bid. The Request Form must be accompanied by evidence as to whether the proposed substitution:

- 1) Is equal in quality, service, and ability to the Specified Item as demonstrated by a side by side comparison of key characteristics and performance criteria (CSI comparison chart);
- 2) Will entail no changes in detail, construction and scheduling of related work;
- 3) Will be acceptable in consideration of the required design and artistic effect;
- 4) Will provide no cost disadvantage to the Developer;
- 5) Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and



6) Will require no change in the Contract Time.

In completing the Request Form, bidder must state with respect to each requested substitution whether bidder will agree to provide the Specified Item in the event that the Developer denies bidder's request for substitution of a Specified Item. In the event that bidder does not agree in the Request Form to provide the Specified Item and the Developer denies the requested Substitution, the bidder's bid shall be considered non-responsive and the Developer may award the Contract to the next lowest bidder or in its sole discretion, release all bidders. In the event that bidder has agreed in the Request Form to provide the Specified Item and the Developer denies bidder's requested substitution for a Specified Item, bidder shall execute the Agreement and provide the Specified Item without any additional cost or charge to the Developer, and if bidder fails to execute the Agreement with the Specified Item(s), bidder's bid bond will be forfeited.

After the bids are opened, the apparent lowest bidder shall provide, within five (5) calendar days of opening such bids, any and all Drawings, Specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Developer in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the Developer's receipt of such evidence by bidder, the Developer will make its final decision as to whether the bidder's request for Substitution for any Specified Items will be granted. The Developer shall have sole discretion in deciding as to whether a proposed request for Substitution is equal to or better than a Specified Item. Any request for Substitution which is granted by the Developer shall be documented and processed through a Change Order. The Developer may condition its approval of any Substitution upon delivery to the Developer of an extended warranty or other assurances of adequate performance of the Substitution. Any and all risks of delay due to DSA, or any other governmental agency having jurisdiction shall be on the bidder.

20. Disqualification of Bidders and Proposals. More than one proposal for the same work from any individual, firm, partnership, corporation, or association under the same or different names will not be accepted; and reasonable grounds for believing that any bidder is interested in more than one proposal for the work will be cause for rejecting all proposals in which such bidder is interested and the bidder will forfeit their bid security to the Developer.

21. Unbalanced or Altered Bids. Proposals in which the prices are obviously unbalanced, and those which are incomplete or show any alteration of form, or contain any additions or conditional or alternate bids that are not called for or otherwise permitted, may be rejected. A proposal on which the signature of the bidder has been omitted may be rejected. If, in the Developer's sole discretion, it determines any pricing, costs or other information submitted by a bidder may result in an unbalanced bid, the Developer may deem such bid non-responsive. A bid may be determined by the Developer to be unbalanced if the bid is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Developer even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advanced payment.

22. Employment of Apprentices. The Contractor and all Subcontractors shall comply with the provisions of California Labor Code including, but not limited to sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices. The Contractor and any Subcontractor under him shall comply with the requirements of said sections, including applicable portions of all subsequent amendments in the employment of apprentices; however, the Contractor shall have full responsibility for

compliance with said Labor Code sections, for all apprenticeable occupations, regardless of any other contractual or employment relationships alleged to exist.

23. Non-Collusion Declaration. Public Contract Code section 7106 requires bidders to submit declaration of non-collusion with their bids. This form is included with the bid documents and must be signed and dated by the bidder under penalty of perjury.

24. Wage Rates, Travel and Subsistence.

a. The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. Pursuant to Labor Code section 1770 et seq., the Developer has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the Developer to any interested party on request and are also available from the Director of the Department of Industrial Relations. The Contractor shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

b. Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

c. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law.

d. These per diem rates, including holiday and overtime work, and employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the administrative office of the Developer, located as noted above and are also available from the Director of the Department of Industrial Relations. It is the Contractor's responsibility to ensure the appropriate prevailing rates of per diem wages are paid for each classification. It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon any subcontractor under such Contractor, to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

25. DIR Registration of Contractor and Subcontractors. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

This Project is a public works project as defined in Labor Code section 1720. Each contractor bidding on this Project and all subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the

duration of the Project. For more information and up to date requirements, contractors are recommended to periodically review the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). Contractor shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the term of the Agreement and in no event shall contractor be granted increased payment from the Developer or any time extensions to complete the Project as a result of contractor's efforts to maintain compliance with the Labor Code or any requirements implemented by the DIR. Failure to comply with these requirements shall be deemed a material breach of this Agreement and grounds for termination for cause. The contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the Developer or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. The Developer reserves the right to withhold contract payments if the Developer is notified, or determines as the result of its own investigation, that contractor is in violation of any of the requirements set forth in Labor Code section 1720 et seq. at no penalty or cost to the Developer. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

26. No Telephone or Facsimile Availability. No telephone or facsimile machine will be available to bidders on the Developer premises at any time.

27. Obtaining Bidding Documents. Bidding Documents, may be obtained from:  
ARC Document Solutions  
934 W. Venice Blvd.  
Los Angeles, CA 90015  
(213) 745-3145

There will be a non-refundable charge to purchase each set of bid documents. No partial sets will be available.

Bidder shall utilize a complete set of Bidding Documents in preparing a bid. The failure or omission of bidder to receive any Bidding Document, form, instrument, Addendum, or other document shall not relieve bidder from any obligations with respect to the bid and/or Contract.

28. Addenda. Clarification or any other notice of a change in the Bidding Documents will be issued only by the Developer and only in the form of a written Addendum, transmitted by fax, e-mail, or available for pick up to all who are known by the issuing office to have received a complete set of Bidding Documents. Any other purported Addenda are void and unenforceable.

Bidder is responsible for ascertaining the disposition of all Addenda issued regardless of Developer notification and to acknowledge all Addenda in the submitted sealed bid prior to the bid opening. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for inspection. Each Addendum will be numbered, dated, and identified with the Project number. Oral statements or any instructions in any form, other than Addendum as described above, shall be void and unenforceable. Addenda issued by the Developer and not noted as being acknowledged by bidder as required in the Bid Form, may result in the bid being deemed non-responsive.

29. Debarment. Bidder may also be subject to debarment, in addition to seeking remedies for False Claims under Government Code section 12650 et seq. and Penal Code section 72, the Developer may debar a Contractor pursuant to Article 15 of the General Conditions if the Board, or the Board may

designate a hearing officer who, in his or her discretion, finds the Contractor has done any of the following:

- a. Intentionally or with reckless disregard, violated any term of a contract with the Developer
- b. Committed an act or omission which reflects on the Contractor's quality, fitness or capacity to perform work for the Developer;
- c. Committed an act or offense which indicates a lack of business integrity or business honesty; or,
- d. Made or submitted a false claim against the Developer or any other public entity (See Government Code section 12650, et seq., and Penal Code section 72)

30. Project Stabilization Agreement. This Project is being completed in accordance with the Development Agreement between the Developer LAUSD and, as such, the Project must be completed in accordance with the terms and conditions agreed upon between the Developer and LAUSD. To that end, the Project shall be subject to the Los Angeles Unified School District Project Stabilization Agreement for New School Construction and Major Rehabilitation (the "PSA") adopted by the LAUSD's Board of Education. All bidders are strongly urged to carefully review the PSA and its requirements on the LAUSD website (<http://www.laschools.org/new-site/project-stabilization/>) prior to submitting a bid.

31. Labor Compliance Program. Pursuant to Labor Code Section 1771.7 and the aforementioned Development Agreement, this Project will be subject to the LAUSD's approved Labor Compliance Program (Final Approval, December 27, 1996). For questions or assistance concerning the LAUSD Labor Compliance Program, contact the Labor Compliance Office at (213) 241-4665 or [lcp@lausd.net](mailto:lcp@lausd.net), or visit [www.laschools.org/lcp](http://www.laschools.org/lcp). Any Contractor to whom a Contract for the Work is awarded by Developer shall comply with the provisions of the California Labor Code, as well as the LAUSD's Labor Compliance Program for the Project, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the Work is to be performed in accordance with, without limitation, Sections 1771, 1773.1, 1774, 1775, 1776 and 1813 of the California Labor Code and the obligation to comply with Section 1777.5 of the California Labor Code governing employment of apprentices. Copies of the prevailing rates of per diem wages and the Labor Compliance Program requirements are available to any interested party at [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr).

32. Prequalification of Contractors. This Project is being completed in accordance with the aforementioned Development Agreement between the Developer and the LAUSD and, as such, the Project must be completed in accordance with the terms and conditions that were agreed upon between the Developer and the LAUSD for the completion of the Project. As a condition of bidding for this Project, and in accordance with California Public Contract Code section 20111.5 and 20111.6, prospective bidders are required to submit to the LAUSD a completed set of prequalification documents on forms provided by the LAUSD. These documents will be the basis for determining which bidders are qualified to bid on this Project. All Prime Contract bidders must be pre-qualified by the LAUSD, Facilities Service Division. Contractors and Subcontractors wanting to provide bids on this Project that are not currently on the LAUSD prequalified lists must apply to the LAUSD for prequalification prior to submitting bids. Copies of the LAUSD's Prequalification requirements and forms are available to any interested bidder at <http://www.laschools.org/new-site/prequalification/>. Bids will not be accepted if a Contractor or Subcontractor has not been prequalified with the LAUSD.



33. Certifications, Acknowledgements, etc. to be Submitted with Bid. Each bidder shall execute the Contractor's Acknowledgment of the LAUSD's Liability Form and the Contractor's Certificate Regarding Workers Compensation Form and such completed forms must be submitted to the Developer with each bidder's bid.

34. Certifications, Acknowledgements, etc. to be Submitted with Executed Contract. Contractor shall execute the Contractor's Certification Regarding Background Checks Form, and the Guarantee Form and such completed forms shall be submitted to the Developer with the Contractor's executed Agreement Form.

### **CHECKLIST OF MANDATORY BID FORMS**

(For Contractor's use and reference only. Additional documents may be required so bidders should carefully review all Contract Documents and Bid Documents)

- Designation of Subcontractors
- Bid Form
- Contractor's Certificate Regarding Workers Compensation
- Contractor's Acknowledgment of the LAUSD's Liability
- Non-Collusion Declaration
- Bid Bond (or Bid Guarantee form if Security is other than Bid Bond)
- Substitution Request Form (If Substitution Request Form is not submitted then NO Substitutions will be allowed after the bids are opened)
- Acknowledgment of Bidding Practices Regarding Indemnity
- DVBE Participation Statement
- Contractor's Certificate Regarding Drug-Free Work Place
- Contractor's Certificate Regarding Alcoholic Beverage and Tobacco-Free Campus Policy

PRE-BID CLARIFICATION FORM (For Contractor's Use)

PROJECT NAME:	Monseñor Oscar Romero Charter School		
PROJECT NUMBER:	MORCS01		
TO:	Rick Shirley & Vincent Petito	EMAIL:	Richard.Shirley@arcadis.com & vpetito@gkkworks.com

DATE:			
FROM:		EMAIL:	
DOCUMENT/DIVISION NUMBER:		DRAWING NUMBER:	

REQUESTED CLARIFICATION:

RESPONSE TO CLARIFICATION:

Attach additional numbered sheets as necessary; however, only one (1) request shall be contained on each submitted form.

## DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.) and any amendments thereof, each Bidder shall set forth below: (a) the name, license number, and location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor, who will perform work or labor or work or improvement to be performed under this Contract, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvements according to detailed Drawings contained in the Plans and Specifications in an amount in excess of one-half of one percent of the Contractor's total bid; and (b) the portion and description of the work which will be done by each subcontractor under this Act. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in this bid. All subcontractors shall be properly licensed by the California State Licensing Board.

If a Contractor fails to specify a subcontractor, or if a Contractor specifies more than one subcontractor for the same portion of work to be performed under the Contract in excess of one-half of one percent of the Contractor's total bid, the Contractor shall be deemed to have agreed that the Contractor is fully qualified to perform that portion, and that the Contractor alone shall perform that portion.

No Contractor whose bid is accepted shall (a) substitute any subcontractor, (b) permit any subcontractor to be voluntarily assigned or transferred or allow the relevant portion of the work to be performed by anyone other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the work in excess of one-half of one percent of the Contractor's total bid where the original bid did not designate a subcontractor, except as authorized in the Subletting and Subcontracting Fair Practices Act.

Subletting or subcontracting of any portion of the work in excess of one-half of one percent of the Contractor's total bid where no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record, of the authority awarding this Contract setting forth the facts constituting the emergency or necessity.

All subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project.

**NOTE:** If alternate bids are called for and bidder intends to use different or additional subcontractors on the alternates, a separate list of subcontractors must be provided for each such Alternate.



**DESIGNATION OF SUBCONTRACTORS FORM**

<b>Description &amp; Portion of Work</b>	<b>Name of Subcontractor</b>	<b>Location &amp; Place of Business</b>	<b>License Type and Number</b>	<b><i>E-Mail &amp; Telephone*</i></b>	<b><i>DIR Registration Number*</i></b>

Description & Portion of Work	Name of Subcontractor	Location & Place of Business	License Type and Number	<i>E-Mail &amp; Telephone*</i>	<i>DIR Registration Number*</i>

\* This information must be provided at the time of submission of bid or must be provided within 24 hours after the time set for the opening of bids. Bidders who choose to provide this information within 24 hours after the time set for the opening of bids are solely responsible to ensure the Developer receives this information in a timely manner. The Developer is not responsible for any problems or delays associated with emails, faxes, delivery, etc. Absent a verified fax or email receipt date and time by the Developer, the Developer’s determination of whether the information was received timely shall govern and be determinative. Bidder shall not revise or amend any other information in this form submitted at the time of bid. The information submitted at the time of bid shall govern over any conflicts, discrepancies, ambiguities or other differences in any subsequent Subcontractor Designation Forms submitted by the bidder.

Proper Name of Bidder: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Signature of Bidder  
 Representative: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 \_\_\_\_\_

**BID FORM**

**FOR**

**MONSEÑOR OSCAR ROMERO CHARTER SCHOOL at  
BERENDO MIDDLE SCHOOL**

**1157 S Berendo St, Los Angeles, CA 90006**

**Bid No. MORCS01**

**FOR**

YPI Charter Schools, Inc., as the operator of the Monseñor Oscar Romero Charter School

CONTRACTOR  
NAME:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE:

(       )

\_\_\_\_\_

FAX:

(       )

\_\_\_\_\_

EMAIL

\_\_\_\_\_

TO: YPI Charter Schools, Inc. as the operator of the Monseñor Oscar Romero Charter School acting by and through its Board of Directors, hereinafter referred to as “Developer”,

1. Pursuant to and in compliance with your Notice Inviting Bids and other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the Contract, the local conditions affecting the performance of the Contract, the cost of the work at the place where the work is to be done, with the Drawings and Specifications, and other Contract Documents, hereby proposes and agrees to perform within the time stipulated, the Contract, including all of its component parts, and everything required to be performed, including its acceptance by the Developer, and to provide and furnish any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to perform the Contract and complete all of the Work in a workmanlike manner required in connection with the construction of:

**BID SCHEDULE NO. MORCS01**

Monseñor Oscar Romero Charter School

in the Developer described above, all in strict conformance with the drawings and other Contract Documents on file at ARC Document Solutions, the reprographics vendor of said Developer for amounts set forth herein.

2. BIDDER ACKNOWLEDGES THE FOLLOWING ADDENDUM:

Number	Number	Number	Number	Number	Number	Number	Number
_____	_____	_____	_____	_____	_____	_____	_____

Acknowledge the inclusion of all addenda issued prior to bid in the blanks provided above. Your failure to do so may render your bid non-responsive.

3. TOTAL CASH PURCHASE PRICE IN WORDS & NUMBERS:

\_\_\_\_\_ DOLLARS  
 (\$ \_\_\_\_\_)

4. ALTERNATE BIDS: The following amounts shall be added to or deducted from the Base Bid at the Developer’s option. Alternates are fully described in the Specifications.

Alternate No. 1: ADD/DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
 Alternate No. 2: ADD/DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
 Alternate No. 3: ADD/DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

5. TIME FOR COMPLETION: The Developer may give a notice to proceed within ninety (90) days of the award of the bid by the Developer. Once the Contractor has received the notice to proceed, the Contractor shall complete the work in the time specified in the Agreement. By submitting this bid, Contractor has thoroughly studied this Project and agrees that the Contract Time for this Project is adequate for the timely and proper completion of the Project. Further, Contractor has included in the

analysis of the time required for this Project, Rain Days, Governmental Delays, and the requisite time to complete Punch List.

In the event that the Developer desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the Developer. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause a hardship to it, the Contractor may terminate the contract with written notice to the Developer within ten (10) days after receipt by the Contractor of the Developer's notice of postponement. Should the Contractor terminate the Contract as a result of a notice of postponement, the Developer shall have the authority to award the Contract to the next lowest responsible bidder, if applicable.

It is understood that the Developer reserves the right to reject any or all bids and/or waive any irregularities or informalities in this bid or in the bid process. The Contractor understands that it may not withdraw this bid for a period of ninety (90) days after the date set for the opening of bids.

6. Attached is bid security in the amount of not less than ten percent (10%) of the bid:

Bid bond (10% of the Bid), certified check, or cashier's check (circle one)

7. The required List of Designated Subcontractors is attached hereto.

8. The required Non-Collusion Declaration is attached hereto.

9. The Substitution Request Form, if applicable, is attached hereto.

10. It is understood and agreed that if written notice of the acceptance of this bid is mailed, telegraphed, or delivered to the undersigned after the opening of the bid, and within the time this bid is required to remain open, or at any time thereafter before this bid is withdrawn, the undersigned will execute and deliver to the Developer a Contract in the form attached hereto in accordance with the bid as accepted, and that he or she will also furnish and deliver to the Developer the Performance Bond and Payment Bond, all within forty five (45) calendar days after award of Contract, and that the work under the Contract shall be commenced by the undersigned bidder, if awarded the Contract, by the start date provided in the Developer's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents.

11. The names of all persons interested in the foregoing proposal as principals are as follows:

---

---

---

---

---



(IMPORTANT NOTICE: If bidder or other interested person is a corporation, state the legal name of such corporation, as well as the names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state the true names of the firm, as well as the names of all individual co-partners comprising the firm; if bidder or other interested person is an individual, state the first and last names in full.)

12. PROTEST PROCEDURES. If there is a bid protest, the grounds shall be submitted as set forth in the Instructions to Bidders.

13. The undersigned bidder shall be licensed and shall provide the following California Contractor’s license information:

License Number: \_\_\_\_\_

License Expiration Date: \_\_\_\_\_

Name on License: \_\_\_\_\_

Class of License: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

If the bidder is a joint venture, each member of the joint venture must include the above information.

14. Time is of the essence regarding this Contract, therefore, in the event the bidder to whom the Contract is awarded fails or refuses to post the required bonds and return executed copies of the Agreement form within forty five (45) calendar days from the date of receiving the Notice of Award, the Developer may declare the bidder’s bid deposit or bond forfeited as damages.

15. The bidder declares that he/she has carefully examined the location of the proposed Project, that he/she has examined the Contract Documents, including the Plans, General Conditions, Supplemental Conditions, Addenda, and Specifications, all others documents and requirements that are attached to and/or contained in the Project Manual, all other documents issued to bidders and read the accompanying instructions to bidders, and hereby proposes and agrees, if this proposal is accepted, to furnish all materials and do all work required to complete the said work in accordance with the Contract Documents, in the time and manner therein prescribed for the unit cost and lump sum amounts set forth in this Bid Form.

16. DEBARMENT. In addition to seeking remedies for False Claims under Government Code section 12650 et seq. and Penal Code section 72, the Developer may debar a Contractor pursuant to Article 15 of the General Conditions if the Board, or the Board may designate a hearing officer who, in his or her discretion, finds the Contractor has done any of the following:

a. Intentionally or with reckless disregard, violated any term of a contract with the Developer;

b. Committed an act or omission which reflects on the Contractor’s quality, fitness or capacity to perform work for the Developer;

c. Committed an act or offense which indicates a lack of business integrity or business honesty; or

d. Made or submitted a false claim against the Developer or any other public entity. (See Government Code section 12650, et seq., and Penal Code section 72)

17. DESIGNATION OF SUBCONTRACTORS. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.) and any amendments thereof, each bidder shall list subcontractors on the Developer’s form Subcontractor list. This subcontractor list shall be submitted with the bid and is a required form

I agree to receive service of notices at the e-mail address listed below.

I the below-indicated bidder, declare under penalty of perjury that the information provided and representations made in this bid are true and correct.

\_\_\_\_\_  
Proper Name of Company

\_\_\_\_\_  
Name of Bidder Representative

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip

( ) \_\_\_\_\_  
Phone Number

( ) \_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-Mail

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Bidder Representative

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his signature shall be placed above.

All signatures must be made in permanent blue ink.

**CONTRACTOR’S CERTIFICATE REGARDING WORKERS’ COMPENSATION  
FORM**

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees.
3. For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers’ compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers’ compensation claims properly, and to pay workers’ compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers’ compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provision before commencing the performance of the work of this Contract.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Date)

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and submitted with the Contractor’s bid.

**CONTRACTOR’S ACKNOWLEDGMENT OF THE LAUSD’S LIABILITY**

TO: YPI Charter Schools, Inc.

RE: Project: Monseñor Oscar Romero Charter School

Please be advised that with respect to the above-referenced Project, the undersigned Contractor acknowledges and agrees that the Project is not being constructed by the Los Angeles Unified School District (the “LAUSD”) and the Project is not an LAUSD Project. The undersigned Contractor further certifies that the LAUSD is not responsible or liable for the Project.

DATE:

CONTRACTOR

By:  
Signature

**NON-COLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ [Title] of \_\_\_\_\_ [Name of Company], the party making the foregoing bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [Date], at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

Signed: \_\_\_\_\_

Typed Name: \_\_\_\_\_



**BID GUARANTEE FORM**

**(Use only when not using a Bid Bond)**

Accompanying this proposal is a cashier's check payable to the order of the YPI Charter Schools, Inc. or a certified check payable to the order of YPI Charter Schools, Inc. in an amount equal to ten percent (10%) of the base bid and alternates (\$ \_\_\_\_\_).

The proceeds of this check shall become the property of said Developer, if, this proposal shall be accepted by the Developer through the Developer's Governing Board, and the undersigned fails to execute a Contract with and furnish the sureties required by the Developer within the required time; otherwise, said check is to be returned to the undersigned.

---

Bidder

Note: Use this form, in lieu of Bid Bond form, when a cashier's check or certified check is accompanying the bid

**BID BOND FORM**

KNOW ALL MEN BY THESE PRESENT that we, the undersigned, (hereafter called "Principal"), and \_\_\_\_\_ (hereafter called "Surety"), are hereby held and firmly bound unto the YPI Charter Schools, Inc. (hereafter called "Developer") in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors, and assigns.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The condition of the above obligation is such that whereas the Principal has submitted to the Developer a certain Bid, attached hereto and hereby made a part hereof, to enter into a Contract in writing for the construction of \_\_\_\_\_.

NOW, THEREFORE,

- a. If said Bid is rejected, or
- b. If said Bid is accepted and the Principal executes and delivers a Contract or the attached Agreement form within five (5) calendar days after acceptance (properly completed in accordance with said Bid), and furnishes bonds for his faithful performance of said Contract and for payment of all persons performing labor or furnishing materials in connection therewith,

Then this obligation shall be void; otherwise, the same shall remain in force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or the call for bids, or the work to be performed thereunder, or the specifications accompanying the same, shall in anyway affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of said Contract, or the call for bids, or the work, or to the specifications.

In the event suit is brought upon this bond by the Developer and judgment is recovered, the Surety shall pay all costs incurred by the Developer in such suit, including without limitation, attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, on the day and year first set forth above.

(Corporate Seal)

By \_\_\_\_\_  
Principal's Signature  
\_\_\_\_\_  
Typed or Printed Name  
\_\_\_\_\_  
Principal's Title

(Corporate Seal)

By \_\_\_\_\_  
Surety's Signature  
\_\_\_\_\_  
Typed or Printed Name  
\_\_\_\_\_  
Title

(Attached Attorney in Fact Certificate)

\_\_\_\_\_  
Surety's Name  
\_\_\_\_\_  
Surety's Address  
\_\_\_\_\_  
Surety's Phone Number

**IMPORTANT:**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant, or loan funds, it must also appear on the Treasury Department's most current list (Circular 570 as amended).

**THIS IS A REQUIRED FORM.**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

---

---

---

(Name and Address of agent or representative for service of process in California if different from above)

---

---

---

(Telephone Number of Surety and agent or representative for service of process in California).

---

---

---

**REQUEST FOR SUBSTITUTION AT TIME OF BID**

Pursuant to Public Contract Code section 3400, bidder submits the following request to Substitute with the bid that is submitted. I understand that if the request to substitute is not “an/or equal” or is not accepted by Developer and I answer “no” I will not provide the specified item, then I will be held non-responsive and my bid will be rejected. With this understanding, I hereby request Substitution of the following articles, devices, equipment, products, materials, fixtures, patented processes, forms, methods, or types of construction:

	Specification Section	Specified Item	Requested Substituted Item	Contractor Agrees to Provide Specified Item if request to Substitute is Denied <sup>1</sup> (circle one)	Developer Decision (circle one)
1.				Yes No	Grant Deny
2.				Yes No	Grant Deny
3.				Yes No	Grant Deny
4.				Yes No	Grant Deny
5.				Yes No	Grant Deny
6.				Yes No	Grant Deny
7.				Yes No	Grant Deny
8.				Yes No	Grant Deny
9.				Yes No	Grant Deny
10.				Yes No	Grant Deny
11.				Yes No	Grant Deny
12.				Yes No	Grant Deny

This Request Form must be accompanied by evidence as to whether the proposed Substitution (1) is equal in quality, service, and ability to the Specified Item; (2) will entail no change in detail, construction, and scheduling of related work; (3) will be acceptable in consideration of the required

<sup>1</sup> Bidder must state whether bidder will provide the Specified Item in the event the Substitution request is evaluate and denied. If bidder states that bidder will not provide the Specified Item the denial of a request to Substitute shall result in the rejection of the bidder as non-responsive. However, if bidder states that bidder will provide the Specified Item in the event that bidder’s request for Substitution is denied, bidder shall execute the Agreement and provide the Specified Item(s). If bidder refuses to execute the Agreement due to the Developer’s decision to require the Specified Item(s) at no additional cost, bidder’s Bid Bond shall be forfeited.



design and artistic effect; (4) will provide no cost disadvantage to the Developer; (5) will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; (6) will require no change of the construction schedule or milestones for the Project; and, (7) Contractor agrees to pay for any DSA Fees or other Governmental Plan check costs associated with this Substitution Request. (See General Conditions Section 3.6)

The undersigned states that the following paragraphs are correct:

1. The proposed Substitution does not affect the dimensions shown on the Drawings.
2. The undersigned will pay for changes to the building design, including Architect, engineering, or other consultant design, detailing, DSA plan check or other governmental plan check costs, and construction costs caused by the requested substitution.
3. The proposed substitution will have no adverse effect on other trades, the Contract Time, or specified warranty requirements.
4. Maintenance and service parts will be available locally for the proposed substitution.
5. In order for the Architect to properly review the substitution request, within five (5) days following the opening of bids, the Contractor shall provide samples, test criteria, manufacturer information, and any other documents requested by Architect or Architect's engineers or consultants, including the submissions that would ordinarily be required under Article 3.7 for Shop Drawings along with a document which provides a side by side comparison of key characteristics and performance criteria (often known as a CSI side by side comparison chart).
6. If Substitution Request is accepted by the Developer, Contractor is still required to provide a Submittal for the substituted item pursuant to Article 3.7 and shall provide required Schedule information (including schedule fragnets, if applicable) for the substituted item as required under Article 8.3.2.1. The approval of the Architect, Engineer, or Developer of the substitution request does not mean that the Contractor is relieved of Contractor's responsibilities for Submittals, Shop Drawings, and schedules under Article 3.7 and 8.3.2 if the Contractor is awarded the Project.

Name of Bidder: \_\_\_\_\_

By: \_\_\_\_\_

Developer: \_\_\_\_\_

By: \_\_\_\_\_

**ACKNOWLEDGMENT OF BIDDING PRACTICES REGARDING INDEMNITY FORM**

TO: YPI Charter Schools, Inc.

RE: Project Number \_\_\_\_\_

Construction Contract for \_\_\_\_\_

Please be advised that with respect to the above-referenced Project the undersigned Contractor on behalf of itself and all subcontractors hereby waives the benefits and protection of Labor Code section 3864, which provides:

“If an action as provided in this chapter is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement to do so executed prior to the injury.”

This Agreement has been signed by an authorized representative of the contracting party and shall be binding upon its successors and assignees. The undersigned further agrees to promptly notify the Developer of any changes of ownership of the contracting party or any subcontractor while this Agreement is in force.

\_\_\_\_\_  
Contracting Party

\_\_\_\_\_  
Name of Agent/Title

**DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION STATEMENT**

Each bidder must complete this form in order to comply with the YPI Charter Schools, Inc. (“Developer”) policy for participation of disabled veteran business enterprises (School District projects funded in whole or in part by the State of California pursuant to the Leroy F. Greene School Facilities Act of 1998. (Education Code §17070.10, *et seq.*)

Project Name: \_\_\_\_\_

Bid No.: \_\_\_\_\_

DSA No.: \_\_\_\_\_

The undersigned, on behalf of the Contractor named below, certifies that the Contractor has made reasonable efforts to secure participation by DVBE in the Contract to be awarded for the above-referenced Bid No., including participation by DVBE subcontractors and/or material suppliers. **Check only one of the following:**

- The Contractor was unable after reasonable efforts to secure DVBE participation in the Contract for the above-referenced Project/Bid No. However, the Contractor will use DVBE services if the opportunity arises at any time during construction of the Project. Upon completion of the Project, the Contractor will report to the Developer the total dollar amount of DVBE participation in any Contract awarded to Contractor, and in any change orders, for the above-referenced Project.
  
- The Contractor has secured DVBE participation in the Contract for the above referenced Project/Bid No., and anticipates that such DVBE participation will equal approximately \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ), which represents approximately \_\_\_\_\_ percent (\_\_\_%) of the total Contract for such Project. Upon completion of the Project, Contractor will report to the Developer the actual total dollar amount of DVBE participation in the Contract awarded to Contractor, and in any change orders, for such Project

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR’S CERTIFICATE REGARDING DRUG-FREE WORKPLACE**

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the Contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

1. Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s or organization’s workplace, and specifying actions which will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. The person’s or organization’s policy of maintaining a drug-free workplace;
  - c. The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contact be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the YPI Charter Schools, Inc. determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature

**CONTRACTOR’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND  
TOBACCO-FREE CAMPUS POLICY**

The Contractor agrees that it will abide by and implement the Developer’s Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, of any kind and at any time, in Developer-owned or leased buildings, on Developer property and in Developer vehicles. The Contractor shall procure signs stating “ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED” and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
Signature



[End of Bid Documents to be Submitted with Bid]

**AGREEMENT FORM**

**THIS AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ in the County of Los Angeles of the State of California, by and between the YPI Charter Schools, Inc., as the operator of the Monseñor Oscar Romero Charter School, hereinafter called “Developer”, and \_\_\_\_\_, hereinafter called the “Contractor”.

**WITNESSETH** that Developer and the Contractor for the consideration stated herein agree as follows:

**ARTICLE 1 - SCOPE OF WORK:** The Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required in connection with \_\_\_\_\_ (“Project”) in strict accordance with the Contract Documents enumerated in Article 7 below. The Contractor shall be liable to Developer for any damages arising as a result of a failure to comply with that obligation, and the Contractor shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, Division of the State Architect (DSA), or representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents, that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the Developer office within seven (7) days of the date of occurrence of such act or omission preventing the Contractor from fully complying with the Contract Documents.

**ARTICLE 2 - TIME OF COMPLETION:** Developer may give notice to proceed within ninety (90) days of the award of the bid by the Developer. Once the Contractor has received a notice to proceed, the Contractor shall reach Substantial Completion (See Article 1.1.46) of the Work within (\_\_\_\_\_) calendar days from receipt of the Notice to Proceed. This shall be called Contract Time. (See Article 8.1.1). It is expressly understood that time is of the essence.

Contractor has thoroughly studied the Project and has satisfied itself that the time period for this Project was adequate for the timely and proper completion of the Project within each milestone and within the Contract time. Further, Contractor has included in the analysis of the time required for this Project, items set forth in General Conditions Article 8.3.2.1, Submittal Schedules, Rain Day Float, and Governmental Delay Float.

In the event that the Developer desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the Developer. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the Developer’s postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause hardship to it, the Contractor may terminate the Contract with written notice to the Developer within ten (10) days after receipt by the Contractor of the Developer’s notice of postponement. It is further understood by the Contractor that in the event that the Contractor terminates the Contract as a result of postponement by the Developer, the Developer shall only be obligated to pay the Contractor for the work performed by the Contractor at the time of notification of postponement. Should the Contractor terminate the Contract as a result of a notice

of postponement, the Developer shall have the authority to award the Contract to the next lowest responsible bidder.

**ARTICLE 3 - LIQUIDATED DAMAGES:** It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the Developer the sum of Three-Thousand Dollars and 0/00 (\$3,000.00) per calendar day for each and every day of delay beyond the Contract Time set forth in Article 2 of this Agreement (inclusive of Milestones that are critical on the critical path or noted as critical to the Developer) as liquidated damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Contractor further agrees that the Developer may deduct such amount thereof from any money due or that may become due the Contractor under the Contract (See Article 9.6 and 2.2 of the General Conditions).

**ARTICLE 4 - CONTRACT PRICE:** The Developer shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), said sum being the total amount stipulated in the Bid Contractor submitted. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Contractor and the Developer, subject to the monetary limitations set forth in Public Contract Code section 20118.4. In the event that the Contractor proceeds with a Change in work without an agreement between the Developer and Contractor regarding the cost of a Change Order, the Contractor waives any Claim of additional compensation for such additional work.

**ARTICLE 5 - HOLD HARMLESS AGREEMENT:** Contractor shall defend, indemnify and hold harmless Developer, LAUSD, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, Developer, LAUSD, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney’s fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless Developer, LAUSD, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney’s fees of any nature whatsoever, which may be incurred by reason of:

- (a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the Developer.
- (b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either

directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the Developer, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off Developer property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the Developer.

(c) Any dispute between Contractor and Contractor’s subcontractors/supplies/ Sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic’s lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Developer, its officers, agents or employees, and LAUSD on account of or founded upon any cause, damage, or injury identified herein Article 5 and shall pay or satisfy any judgment that may be rendered against the Developer, its officers, agents or employees and LAUSD in any action, suit or other proceedings as a result thereof.

The Contractor’s and Subcontractors’ obligation to defend, indemnify and hold harmless the Developer, LAUSD, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act (“ADA”).

**ARTICLE 6 - PROVISIONS REQUIRED BY LAW:** Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT:** The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice Inviting Bids
- Instructions to Bidders
- Designation of Subcontractors
- Non-Collusion Declaration
- Bid Guarantee Form
- Bid Bond
- Bid Form
- Contractor’s Certificate Regarding Worker’s Compensation
- Contractor’s Acknowledgment of the LAUSD’s Liability
- Acknowledgment of Bidding Practices Regarding Indemnity
- DVBE Participation Statement and Close-Out Forms
- Agreement Form

Payment Bond  
Performance Bond  
Dual Oblige Rider to Performance Bond  
Guarantee  
Escrow Agreement for Security Deposit In Lieu of Retention  
Contractor's Certification Regarding Background Checks  
Workers' Compensation/Employers Liability Endorsement  
General Liability Endorsement  
Automobile Liability Endorsement  
Contractor's Certificate Regarding Drug-Free Workplace  
Contractor's Certificate Regarding Alcohol and Tobacco  
Contractor's Certificate Regarding Background Checks  
General Conditions  
LAUSD's Project Stabilization Agreement for New School Construction and Major Rehabilitation  
Letter of Assent  
LAUSD's Labor Compliance Program Inclusive of all Forms, Terms and Conditions  
LAUSD Prequalification Program Inclusive of all Forms, Terms and Conditions  
Supplementary and Special Conditions  
Technical Specifications (Volumes 1 and 2)  
All Addenda as Issued  
Drawings/Plans (Volumes 1 and 2)  
Substitution Request Form  
MORCS Final Initial Study/Mitigated Negative Declaration, By Impact Sciences, Inc, November, 2014  
Requirements, Reports and/or Documents in the Project Manual or Other Documents Issued to Bidders

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

**ARTICLE 8 - PREVAILING WAGES:** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the Developer and are also available from the Director of the Department of Industrial Relations. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

The following are hereby referenced and made a part of this Agreement and Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)
3. LAUSD's Project Stabilization Agreement for New School Construction and Major Rehabilitation.
4. LAUSD's Labor Compliance Program Inclusive of all Forms, Terms and Conditions.



**ARTICLE 9 - RECORD AUDIT:** In accordance with Government Code section 8546.7 (and Davis Bacon, if applicable) and Article 13.11 of the General Conditions, records of both the Developer and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

**ARTICLE 10 - CONTRACTOR'S LICENSE:** The Contractor must possess throughout the Project a Class B Contractor's License, issued by the State of California, which must be current and in good standing.

**ARTICLE 11 - CERTIFICATIONS:** Contractor shall execute and submit to the Developer all certifications and acknowledgements required by the Contract Documents.

**ARTICLE 12 - COLLATERAL ASSIGNMENT OF CONTRACT:** This Contract is hereby assigned to the LAUSD by Developer, provided that:

1. The assignment is effective only upon the uncured default of the Developer under the Development Agreement between the Developer and the LAUSD and only after the LAUSD has provided the Developer and Contractor with written notice of the Developer's failure to cure any default thereunder; and

2. The assignment is invoked by the LAUSD in writing.

If the LAUSD invokes the assignment of the Contract, the LAUSD assumes the Developer's rights and obligations under the Contract. The LAUSD has the right to invoke the assignment of the Contract, but not the obligation, in the event of a Developer default under the Development Agreement between the Developer and the LAUSD. The Developer, Contractor and the Contractor's Surety hereby consent to this contingent assignment without the payment of any fee whatsoever.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the above named parties, on the day and year first above written.

YPI Charter Schools, Inc.

CONTRACTOR:

By: \_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name

\_\_\_\_\_  
Title (Authorized Officers or Agents)

\_\_\_\_\_  
Signature

**(CORPORATE SEAL)**

**PAYMENT BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, YPI Charter Schools, Inc. (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the “Public Work”); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, \_\_\_\_\_, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto YPI Charter Schools, Inc. and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys’ fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any

---

Monseñor Oscar Romero Charter School  
YPI Charter Schools, Inc.

Payment Bond  
Page 47

conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:  
(Name and Address of Surety)

(Name and Address of agent or representative for  
service for service of process in California)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
---

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of \_\_\_\_\_ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.



**PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the YPI Charter Schools, Inc. (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the “Public Work”); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated \_\_\_\_\_, (hereinafter referred to as the “Contract”), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

WHEREAS, Contractor shall obtain a Dual Obligee Rider to add the Los Angeles Unified School District as an additional Obligee which shall be deemed attached hereto and incorporated herein to form a part of this Performance Bond.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the YPI Charter Schools, Inc. in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exonerated or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exonerated or pro tanto) by any overpayment or

underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of Liquidated Damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract Price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of Liquidated Damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract. Obligee shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged: \$ \_\_\_\_\_ (This must be filled in by a corporate surety).

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:  
(Name and Address of Surety)

(Name and Address of agent or representative for  
service for service of process in California)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, who proved on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact  
of \_\_\_\_\_ (Surety) and acknowledged to me that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE:            A copy of the power-of-attorney to local representatives of the bonding company must be  
attached hereto.

**DUAL OBLIGEE RIDER TO PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)**

TO BE ATTACHED TO and form a part of Bond No. \_\_\_\_\_ dated the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, issued by \_\_\_\_\_, as Surety, on behalf of \_\_\_\_\_, as Principal, in favor of YPI Schools, Inc., as Obligee; and

WHEREAS, upon the request of the Principal and Obligee, the attached bond is hereby amended to add the Los Angeles Unified School District as an Additional Obligee.

PROVIDED HOWEVER, there shall be no liability under this bond to the Obligee(s), or any of them, unless the said Obligee(s), or any of them, shall make payments to the Principal in accordance with the terms of said Contract and shall perform all of the other obligations to be performed under said Contract at the time and in the manner therein set forth; all of the acts of one Obligee being binding upon the others.

The aforementioned Performance Bond shall be subject to all of the terms, conditions and limitations set forth therein except as herein modified.

***(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)***



IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OBLIGEE:

\_\_\_\_\_

By: \_\_\_\_\_

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

**Acknowledgement by Additional Obligees:**

The Additional Obligee(s) hereby acknowledge that this agreement is subject to the precedent condition that the Additional Obligee(s) shall have no right of action against the Principal or the Surety except such as the original Obligee would have and shall be subject to all counterclaims, offsets and defenses however arising which would be available against the original Obligee.

In no event shall the Surety be liable in the aggregate to the Obligee(s) for more than the penalty of the Performance Bond.

WITNESS the following signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ADDITIONAL OBLIGEE:  
Los Angeles Unified School District:

\_\_\_\_\_

By: \_\_\_\_\_

### GUARANTEE

Guarantee for \_\_\_\_\_ . We hereby guarantee that the \_\_\_\_\_, which we have installed in \_\_\_\_\_ has been done in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the bid documents. The undersigned and its surety agrees to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of One (1) year from the date of the Notice of Completion of the above-mentioned structure by the YPI Charter Schools, Inc., ordinary wear and tear and unusual abuse or neglect excepted.

In the event the undersigned or its surety fails to comply with the above-mentioned conditions within a reasonable period of time, as determined by the Developer, but not later than ten (10) days after being notified in writing by the Developer or within forty eight (48) hours in the case of an emergency or urgent matter, the undersigned and its surety authorizes the Developer to proceed to have said defects repaired and made good at the expense of the undersigned and its surety, who will pay the costs and charges therefor upon demand. The undersigned and its surety shall be jointly and severally liable for any costs arising from the Developer's enforcement of this Guarantee.

Countersigned

\_\_\_\_\_  
(Proper Name)

\_\_\_\_\_  
(Proper Name)

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Subcontractor or Contractor)

\_\_\_\_\_  
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

## **ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between YPI Charter Schools, Inc., 9400 Remick Ave, Los Angeles, CA 91331, hereinafter called "Developer", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Contractor", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent".

For the consideration hereinafter set forth, the Developer, Contractor and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for Retention earnings required to be withheld by Developer pursuant to the Construction Contract entered into between the Developer and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Developer shall make payments of the Retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Developer within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as Retention under the terms of the Contract between the Developer and Contractor. Securities shall be held in the name of the Developer, and shall designate the Contractor as beneficial owner.
2. The Developer shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the Developer makes payments of Retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Developer pays the Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Developer. These expenses and payment terms shall be determined by the Developer, Contractor, and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Developer.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Developer to the Escrow Agent that Developer consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The Developer shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the Developer of the notice of default under Article 2.2, Article 9.6 or Article 14, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Developer.

8. Upon receipt of written notification from the Developer certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

9. Escrow Agent shall rely on the written notifications from the Developer and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Developer and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Developer and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Developer:

---

Title

---

Name

---

Signature

---

Address

On behalf of Contractor:

---

Title

---

Name

---

Signature

---

Address



On behalf of Agent:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the Developer and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date set forth above.

DEVELOPER

CONTRACTOR

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**INSURANCE DOCUMENTS & ENDORSEMENTS**

The following insurance endorsements and documents must be provided to the YPI Charter Schools, Inc. within five (5) calendar days after receipt of notification of award. If the apparent low bidder fails to provide the documents required below, the Developer may award the Contract to the next lowest responsible and responsive bidder or release all bidders, and the bidder’s bid security will be forfeited. All insurance provided by the bidder shall fully comply with the requirements set forth in Article 11 of the General Conditions.

1. **General Liability Insurance:** Certificate of Insurance with all specific insurance coverages set forth in Article 11 of the General Conditions, proper Project description, designation of the Developer as the Certificate Holder, a statement that the insurance provided is primary to any insurance obtained by the Developer and minimum of 30 days’ cancellation notice. Bidder shall also provide required additional insured endorsement(s) designating all parties required in Article 11 of the General Conditions. The additional insured endorsement shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the Developer in its sole discretion.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
 (Title) \_\_\_\_\_ (Department) \_\_\_\_\_  
 \_\_\_\_\_  
 (Company) \_\_\_\_\_  
 \_\_\_\_\_  
 (Street Address) \_\_\_\_\_  
 \_\_\_\_\_  
 (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_  
 ( \_\_\_\_\_ ) \_\_\_\_\_  
 (Telephone Number)

2. **Workers’ Compensation/ Employer’s Liability Insurance:** Certificate of Workers’ Compensation Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum of 30 days’ cancellation notice, proper Project description, waiver of subrogation and any applicable endorsements.

3. Automobile Liability Insurance: Certificate of Automobile Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum 30 days' cancellation notice, any applicable endorsements and a statement that the insurance provided is primary to any insurance obtained by the Developer.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
 (Title) \_\_\_\_\_ (Department) \_\_\_\_\_  
 \_\_\_\_\_  
 (Company) \_\_\_\_\_  
 \_\_\_\_\_  
 (Street Address) \_\_\_\_\_  
 \_\_\_\_\_  
 (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) \_\_\_\_\_  
 (\_\_\_\_\_) \_\_\_\_\_  
 (Telephone Number)

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_

Signature

**DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) CONTRACTOR CLOSE-OUT STATEMENT**

The Contractor shall complete this form, as a condition to Final Payment, for purposes of reporting participation by Disabled Veteran Business Enterprises (DVBE) in the Contract for the Project/Bid No. specified below.

Project Name: \_\_\_\_\_

Bid No.: \_\_\_\_\_

DSA No.: \_\_\_\_\_

Name	Address/Phone	Category of Work*	\$ Amount of Contract

\* Categories of work include: (1) construction services (specify services that DVBE will provide); (2) architecture and engineering services; (3) procurement of materials, supplies and equipment; and (4) information technology.

The undersigned, on behalf of the Contractor, certifies that DVBE participation on the Contract for Bid No. \_\_\_\_\_ equaled \_\_\_\_\_ dollars (\$ \_\_\_\_\_), which represents approximately \_\_\_\_ percent (\_\_\_%) of the total Contract price including change orders for the Project.

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

**(Modernization Projects)**

\_\_\_\_\_ certifies that it has performed one of the following:  
[Name of contractor/consultant]

- Pursuant to Education Code section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the \_\_\_\_\_ Developer, pursuant to the contract/purchase order dated \_\_\_\_\_, and that none have been convicted of serious or violent felonies, as specified in Penal Code sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code section 45125.1, attached hereto as Attachment "A" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

- Pursuant to Education Code section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:
  - 1. The installation of a physical barrier at the worksite to limit contact with pupils.
  - 2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Name of Contractor/Consultant]

\_\_\_\_\_  
By its: \_\_\_\_\_



**ATTACHMENT A:**

**CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS**

*(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)*

## **GENERAL CONDITIONS**

### **ARTICLE 1 DEFINITIONS**

#### **1.1 BASIC DEFINITIONS**

NOTE: The following shall not be construed as a comprehensive list of all definitions in the Contract Documents and there may be other definitions set forth in the Contract Documents. Additionally, any references to any DSA forms, documents or requirements shall be construed to incorporate any updates, supplements, or additions. The Contractor shall be required to meet the latest DSA requirements applicable to the Project.

1.1.1 Action of the Board of Directors is a vote of a majority of the Developer's Governing Board.

1.1.2 Approval means written authorization through action of the Governing Board. The Governing board has delegated to the Executive Director or Chief Operating Officer the authority to approve certain modifications, Change Orders or Immediate Change Directives (Subject to the limits of the Delegation of Authority provided by the Board). In no case shall the Executive Director or Chief Operating Officer have authority to approve total Change Orders or Modifications to the Project exceeding 10% of the Contract Sum.

1.1.3 Architect means the architect, engineer, or other design professional engaged by the Developer to design and perform general observation of the work of construction and interpret the Drawings and Specifications for the Project. Also see Article 4.

1.1.4 As-Builts are a set of Plans and Specifications maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Payment Application and a requirement for Contract Close-Out. See Article 3.17

1.1.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy is fit for occupancy and its intended use. Basic requirements are the building is safe, at or near Substantial Completion, and all fire/ life safety items are approved and operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if fire/ life safety items are not approved and operational. Taking occupancy on a structure that is under a fire watch is not considered beneficial occupancy. Further, taking of Beneficial Occupancy is not a point in time when retention is due unless the entire school has obtained a Certificate of Substantial Completion that meets the definition of 1.1.46.

1.1.6 Claims. A Claim is a request for payment, supported by back-up documentation which includes, invoices time sheets, or other documents substantiating legitimacy or entitlement that is submitted during the Project or immediately following the Project made prior to the Final Retention Payment Application and prior to Final Completion of the Project. A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the CONTRACT and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the Developer. See Article 4.6.

## **GENERAL CONDITIONS**

1.1.7 Change Order (CO). A CO is a written instrument prepared by the Architect and signed by the Developer (as authorized by the Developer's Governing Board), the Contractor, and the Architect, stating their agreement upon (1) A description of a change in the Work, (2) The amount of the adjustment in the Contract Sum, if any; and (3) The extent of the adjustment in the Contract Time, if any. See Article 7.2.

1.1.8 Change Order Request (COR). A COR is a written request supported by backup documentation prepared by the Contractor requesting that the Developer and the Architect issue a CO based upon a proposed change, or a change that results in an adjustment in cost, time or both, or arising from an RFP, CCD or ICD. (See Article 7.6)

1.1.9 Close-Out means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is Complete (See DSA Certification Guide). See Article 9.9.

1.1.10 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Plans and Specifications. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for work affecting structural, access or fire/ life safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 141) for work NOT affecting structural safety, access compliance or fire/ life safety that will not require a DSA approval (except to confirm that no approval is required). See Article 7.3.

1.1.11 Complete/ Completion/ Final Completion means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, the Project has been Closed Out, and all Work has ceased on the Project. This may also be referred to as Final Completion. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy does not mean the Work is Complete.

1.1.12 Completion Date is the date when all Work for the Project shall be Substantially Complete and is the date assigned at the end of the Contract Time for the Project. See Article 1.1.49.

1.1.13 Construction Manager. The Construction Manager is a consultant to the Developer contracted to assist in Project planning, management and construction of the Project. If there is a Construction Manager, they may assist in various aspects of the Project including, but not limited to Monitoring the progress of the construction, reviewing and monitoring the schedule, progress of work, monitoring pay requests, facilitating communications, advising the Developer and its Board of Education on various aspects of the construction process, monitoring the RFI, COR, CCD, ICD, RFP, Claims, Disputes and other Project related processes.

1.1.14 Contract or Agreement when the terms are used in these General Conditions shall be references to the Contract Documents as defined herein.

1.1.15 Contract Documents (sometimes referred to as Construction Documents) consist of the Agreement between Developer and Contractor (hereinafter the Agreement or Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to bid, instructions to bidders, notice to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the

## **GENERAL CONDITIONS**

Architect. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Developer and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Developer and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.16 Contract Time is the time period specified in the Contract Documents in which the Project shall be completed. This is sometimes referred to a Contract Duration, or "time in which the Contractor has to complete the Project". See Article 8.1.1

1.1.17 Contractor, Developer, and Architect are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if they are of singular number and neuter gender. Any reference to "Owner" shall mean "Developer" or YPI Charter Schools, Inc.

1.1.18 Cure is the act of remedying a material failure to perform under the terms of the Contract Documents during the time provided to correct Contractor's Default. Specific time periods are provided to Cure and Correct a Contractor Default under Article 14 and for a Partial Default under Article 2.2 as well as elsewhere in the Contract Documents.

1.1.19 Days means calendar days unless otherwise specifically stated.

1.1.20 Default is a material breach of Contract. A Termination for Cause under Article 14 is a declaration of Default of the Contract and shall act as a demand upon the Surety to perform under the terms of the Performance Bond. Partial Defaults may also be tendered to the Surety at Developer's discretion. See Article 2.2.

1.1.21 Dispute. A dispute is a disagreement on terms or conditions of the Project where the Contractor's opinion of the Project, Payment, Change Order or Request for Proposal differs from that of the Developer or Architect. A dispute only rises to the level of a claim once the dispute is assembled with back-up documentation and presented for evaluation. See Article 4.6

1.1.22 Developer Representative is the person designated by the Developer to represent the Developer during the Construction for the Project. This Developer Representative shall have the delegated authority as further defined in Article 1.1.2. This Developer Representative may be an employee of the Developer who may have the delegated authority as set forth in Article 1.1.3, and may also include Construction Managers. In some cases, the Developer and its Board may be assisted by a Construction Manager. When a Construction Manager is assisting the Developer, the Contractor, Architect, and Inspector shall have a primary contact with the Developer's Construction Manager who will advise the Developer.

1.1.23 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including Plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.

## GENERAL CONDITIONS

1.1.24 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved Plans, Specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the Developer pending CCD approval). See DSA website.

1.1.25 Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent threat to the continuation of school classes, a critical path delay that will result in not being able to occupy the school when students arrive to use the facility, danger from the facility or from outside the facility, Act of God, or other action which requires immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

1.1.26 Float the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. See Article 8.1.4.

1.1.27 Immediate Change Directive. (ICD) A written order prepared by the Architect and signed by the Developer and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 7.3

1.1.28 Inspector of Record (IOR)/ Project Inspector (PI) is the individual retained by the Developer in accordance with Title 24 of the California Code of Regulations and who will be assigned to the Project.

1.1.29 Labor Compliance Program means the Labor Compliance Program approved by the Los Angeles Unified School District (Final Approval, December 27, 1996) which is applicable to the Project.

1.1.30 "LAUSD" means the Los Angeles Unified School District.

1.1.31 Notice of Non-Compliance (DSA Form 154) is a document issued by the Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 7.1.2.

1.1.32 Payment Application or Certificate of Payment is the Contractor's certified representation of the actual level of Work performed on the Project. Payment Applications are sometimes also called "Certificate of Payment", "Request for Payment", "Payment Application", or similar terms, and shall follow the Schedule of Values that are approved by the Architect, Inspector and Developer. See Article 9.3.

1.1.33 Project is the complete construction of the Work performed in accordance with the Contract Documents.

1.1.34 Project Manual is the volume assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.



## **GENERAL CONDITIONS**

1.1.35 The Project Stabilization Agreement (“PSA”) means the Los Angeles Unified School District Project Stabilization Agreement for New School Construction and Major Rehabilitation which is applicable to the Project.

1.1.36 Provide shall include “provide complete in place,” that is “furnish and install complete.”

1.1.37 Punch List/ Punch Item/ Incomplete Punch Item is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Inspector and Architect of Work required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Closed Out. Issuance of the Retention Payment is dependent of the proper completion of the Punch List. See Article 9.9.

1.1.37.1 *Contractor’s List of Punch Items* is a list of minor repair items the Contractor submits when the Contractor considers the Work Substantially Complete. Submission of this List of Incomplete Punch Items is the Contractor’s representation that the Project is Substantially Complete. See Article 9.9.1

1.1.38 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions. See Article 7.4.

1.1.39 Request for Proposal (RFP) is a written request prepared by the Architect (and/or CM) requesting the Contractor to submit to an estimate of the effect of a proposed change on the Contract Price and (if applicable) the Contract Time. See Article 7.5.

1.1.40 Safety Orders are those issued by any city, county, state or federal agency having jurisdiction over the Project.

1.1.41 Schedule is the Contractor’s view of the practical way in which the Work will be accomplished. In this Agreement there is a requirement for a Baseline Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 8.3.2.9.1. See Article 8 of the General Conditions.

1.1.42 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the Developer. This Schedule of Values shall adequately detail the price for the Work so Progress Payments Applications can be meaningfully reviewed by the Inspector, Architect of Record, Engineer of Record, and Developer. (See Article 9.2)

1.1.43 Separate Contracts are Contracts that the Developer may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor’s Schedule. See Article 6.

1.1.44 Site refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

## **GENERAL CONDITIONS**

1.1.45 Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.46 Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these Specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.

1.1.47 Stop Work Order, or an Order to Comply, is issued when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Inspector of Record, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b), the Developer shall not be held liable in any action filed against the Developer for any delays caused by compliance with the Stop Work Order

1.1.48 Subcontractor, as used herein, includes those having direct or indirect contracts with Contractor and ones who furnished labor, material or services for a special design according to Plans, Drawings, and Specifications of this Work.

1.1.49 Substantial Completion/ Substantially Complete(d) is not reached unless and until each of the following three (3) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch List Items (See Article 9.9.1.1 ); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, and all building systems including mechanical, electrical and plumbing are all functioning; and (3) the Project is fit for occupancy and its intended use. For the purposes of this Contract, any references to Completion Date means Substantial Completion Date.

1.1.50 Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. For this Project, a Substitution is subject to the filing of a Construction Substitution Request Form at the time of bid and meeting the requirements of Article 3.10.

1.1.51 Supplementary Conditions/ Supplementary General Conditions/ Special Conditions are terms that are sometimes used interchangeably and refer to any additional requirements or changes to the General Conditions as noted.

1.1.52 Surety is the person, firm, or corporation that executes as a bid bond, Payment Bond or Performance Bond guarantor on the Contractor's Bid, Contractor's Performance on the Contract and Payment of the Contractor's Subcontractors, material suppliers, vendors and labor on the Project. The Surety is bound to the same extent as the Contractor is bound once a Default occurs. A default includes a Termination for Substantial Failure to Perform under Article 14, but also includes any breach of Contract and is subject to the requirements and responsibilities as set forth in the Performance Bond.

1.1.53 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor who performs any portion of the Work, to visit the Site of the proposed Work (a continuing obligation after the commencement of the Work), to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully

## **GENERAL CONDITIONS**

understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor and its Subcontractors shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents and bid documents before preparing and submitting any bid.

1.1.54 Workers include laborers, workers, and mechanics.

### **1.2 EXECUTION, CORRELATION AND INTENT**

#### **1.2.1 Correlation and Intent**

1.2.1.1 *Documents Complementary and Inclusive.* The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractor's Contract with the Developer. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. The Contractor is bound to provide the Work complete and is under a legal duty to carefully study Plans and schedule operations well ahead of time and identify inconsistencies with the Plans and Specifications and call such inconsistencies to the attention of the Architect or Registered Engineer through the Inspector under Section 4-343(b) of Title 24.

1.2.1.2 *Work to be Complete.* Contractor has thoroughly studied the Contract Documents and understands that the Developer contracted with Contractor to provide a complete Project which means complete systems and buildings. The entire set of Contract Documents shows a complete Project and Contractor agrees that there are multiple disciplines putting together a set of Contract Documents. Thus, if portions of a system are shown on some Drawings and not others, this does not mean the Contractor is to only provide part of a system. For example, if an air conditioning unit is shown on the mechanical Drawings, the plumbing for the air conditioning is shown on another Drawing, and the electrical shown on the electrical Drawings, the Contractor is to provide a complete and working air conditioning system. The only time when an item is supplied incomplete is if the system is shown specifically as incomplete since others will be completing the system. Work includes, but is not limited to materials, workmanship, and manufacture of fabrication of components for the Project.

1.2.1.3 *Coverage of the Drawings and Specifications.* The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor. The Contractor is responsible for the whole Project as contractually set forth as the Contract Documents. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

1.2.1.4 *Conflicts.* In the event there is a discrepancy between the various Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

## **GENERAL CONDITIONS**

1.2.1.5 *Conformance with Laws.* Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, even if through mistake or otherwise any such provision is not inserted, or is not correctly inserted.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public and municipal utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. Such checking shall include review of Title 24 of the California Code of Regulations, California Building Code, local utility, local water connection, local grading and all other applicable agencies. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with the Contract Documents, Contractor shall, within five (5) days, notify the Inspector, Architect and Developer in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project. (See Title 24 Section 4-343)

The Contractor shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules, and regulations if the Contractor performed same (1) without first consulting the Architect for further instructions regarding said Work or (2) disregarded the Architect's instructions regarding said Work.

1.2.1.6 *Ambiguity and Inconsistency.* Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Prior to commencing any portion of the Work, Contractor shall notify Architect and Developer in writing of any perceived or alleged error, inconsistency, conflict, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. Contractor shall maintain an adequate inspection system and perform personal observations and review work and pre-plan the project to ensure the Work performed under the Contract conforms to Contract requirements. Contractor shall maintain records of such review and observation to ensure strict compliance with the terms of the Contract.

1.2.1.7 *Typical Parts and Sections.* Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are of the same construction are shown in outline only, the complete or more detailed shall apply to the Work which is shown in outline.

1.2.1.8 *Dimensions.* Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Architect's decisions on matters relating to aesthetic effect will be final.

### 1.2.2 Addenda and Deferred Approvals

## **GENERAL CONDITIONS**

1.2.2.1 *Addenda* are the changes in Specifications, Drawings, Contract Documents, and Plans which have been authorized in writing by the Developer or Architect, and which alter, explain, or clarify the Contract Documents. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda unless otherwise specified in the addenda.

1.2.2.2 *Deferred Approvals*. Deferred Approvals are Submittals that are reviewed by the Architect (or Engineer of Record) and submitted to DSA for approval based on thorough detailing of manufacturer and Project specific design. See Article 3.9.1 and 3.9.3. The Deferred Approval item cannot be fully detailed on the originally approved Drawings or Specifications because of variations in product design and manufacture. Contract Documents which require Deferred Approval items are meant to be for illustration purposes only. Approval of Plans for such a portion of the Work may be deferred until the material suppliers and Subcontractors are selected. All Deferred Approvals are noted in the Plans and Specifications. Contractor is responsible for all Deferred Approval requirements set forth in the Contract Documents. Contractor is responsible to comply with all laws, building codes, Title 24 and regulations necessary to obtain all necessary approvals, including those required from the Division of the State Architect (“DSA”) and the State Fire Marshall. Contractor shall not be granted an extension of time for failure to plan, schedule for and obtain necessary approvals. Contractor shall Schedule all Deferred Approval items in the Baseline Schedule and Schedule Updates under Article 3.9.6

### 1.2.3 Specification Interpretation

1.2.3.1 *Titles*. The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

1.2.3.2 *As Shown, Etc.* Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 *General Conditions*. The General Conditions and Supplementary General Conditions are a part of the Contract Documents which further defines and refines the Contract entered between the Contractor and Developer.

1.2.3.4 *Abbreviations*. In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Contractor shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Drawings. In the interest of brevity, the Contract 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.

1.2.3.5 *Plural*. Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.6 *Metric*. The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The



## **GENERAL CONDITIONS**

metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.7 *Standard Specifications.* Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect at the date of the Contractor’s proposal unless directed otherwise. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

### 1.2.4 Rules of Document Interpretation

1.2.4.1 In the event of conflict within the Drawings, the following rules shall apply:

- a. General Notes, when identified as such, shall be incorporated into other portions of Drawings.
- b. Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
- c. Larger scale Drawings shall take precedence over smaller scale Drawings.
- d. At no time shall the Contractor base construction on scaled Drawings.

1.2.4.2 Specifications shall govern as to materials, workmanship, and installation procedures.

1.2.4.3 If Contractor observes that Drawings and Specifications are in conflict, Contractor shall, prior to commencing work, notify the Architect in writing for the purposes of obtaining an interpretation of the Contact Documents.

1.2.4.4 In the case of conflict or inconsistencies, the order of precedence shall be as follows:

- a. General Conditions take precedence over Drawings and Specifications.
- b. Supplemental Conditions take precedence over General Conditions.
- c. The Agreement Form shall take precedence over the Supplemental Conditions.
- d. In the case of disagreement or conflict between or within Specifications, and Drawings, the more stringent, higher quality, and greater quantity of Work shall apply.
- e. Addenda shall take precedence over Drawings and Specifications.

## **GENERAL CONDITIONS**

- f. General Conditions shall take precedence over Addenda.
- g. Drawings and Specifications take precedence over the Soils Report.

### **1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other Contract Documents for the Project are the property of the Developer and/or Architect pursuant Contract requirements between the Developer and Architect. The Contractor may retain one Contract record set. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a Copyright in the Drawings, Specifications, and other documents prepared by the Architect. All copies except the Contractor's record set, shall be returned or properly accounted for upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work. The Developer and/or Architect hereby grants the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings, Specifications, and other documents prepared for the Project in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Developer's property interest or other reserved right.

**GENERAL CONDITIONS****ARTICLE 2  
DEVELOPER****2.1 INFORMATION AND SERVICES REQUIRED OF THE DEVELOPER****2.1.1 Site Survey**

The Developer will furnish, at its expense, a legal description of the Site and a land survey showing the boundaries of the Site. Contractor shall be responsible for all surveys regarding location of construction, grading and site work.

**2.1.2 Soils**

When required by the scope of the Project, the Developer will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services, with written reports and appropriate written professional recommendations, may include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

**2.1.3 Soils Report Part of the Contract Documents: Contractor Reliance**

A soils investigation report has been obtained from test holes at the Site, and such report is incorporated into this Contract and made available for the Contractor's use in preparing its bid and Work under this Contract. Where the Plans and Specifications are more specific and provide more significant structure, systems, reinforcing, thicknesses, or construction methods, the Drawings shall control over the soils report. The soils report is available at the Architect's office for review and it is Contractor's responsibility to ensure that Contractor has reviewed the soils investigation report. Any information obtained from such report or any other information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only. If, during the course of Work under this Contract, Contractor encounters subsurface conditions which differ materially from those indicated in the soils report, then Contractor shall notify the Developer within five (5) calendar days of discovery of the condition, and changes to the Contract Price may be made in accordance with Article 7 entitled "Changes in the Work." Contractor agrees that no claim against Developer will be made by Contractor for damages and hereby waives any rights to damages in the event the Contractor fails to notify Developer within the five-day period mentioned above.

**WARNING: DEVELOPER DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. CONTRACTOR HAS REVIEWED AND IS FAMILIAR WITH THE REQUIREMENTS OF THE SOILS INVESTIGATION REPORT. CONTRACTOR UNDERSTANDS THAT PLANS, DRAWINGS AND SPECIFICATIONS SUPERSEDE THE SOILS REPORT IF THERE ARE CONFLICTS. FURTHER, IN ADDITION TO THE INFORMATION IN THE SOILS REPORT, CONTRACTOR HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE PROJECT SITE AND THE SOILS CONDITIONS OF THE SITE. DEVELOPER DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING**

**GENERAL CONDITIONS****CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION.**2.1.4 Utilities

2.1.4.1 *Location of Point of Connection.* The locations shown for the point of connection are approximate. It shall be the responsibility of the Contractor to determine the exact location of all service connections.

2.1.4.2 *Regional Notification Center.* Contractor, except in an emergency, shall contact the appropriate regional notification center at least two (2) business days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Developer, and obtain an inquiry identification number from that notification center. See Government Code section 4216.3. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any Subcontractor of the Contractor and the Developer has been given the identification number by the Contractor. Any damages arising from failure to make appropriate regional notification shall be at the sole risk of Contractor. Contractor shall solely be responsible for any fines, penalties or damages for violation of this Article and Government Code section 4216.6 or 4216.7. Any delays caused by failure to make appropriate regional notification shall be at the sole risk of Contractor and shall not be considered for extension of time pursuant to Article 8.4.

2.1.4.3 *Utilities - Removal and Restoration.* The Developer has endeavored to determine the existence of utilities at the Site of the Work from the records of the Developer of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown in the Contract Documents. Thus, the locations of the main or trunklines located on the Drawings are approximate locations and not exact.

No excavations were made to verify the locations shown for underground utilities. Other than the main or trunkline, which the Developer has endeavored to locate on the Plans, service connections or laterals to these utilities may not be shown on the Plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the Developer's representative as to any utility main or trunkline discovered by Contractor in a different position than provided by the Regional Notification Center. With respect to main or trunklines, Contractor is to immediately notify Developer if the location is substantially different than as shown in the Contract Documents.

Contractor shall coordinate its Work with all utilities, including, but not limited to electricity, water, gas and telephone and meet with said utilities prior to the start of any work. Contractor shall show timing of all utility coordination activities under the Scheduling requirements of Article 8.

2.1.4.4 *Other Utilities.* In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the Work, the work on the utility shall be performed and paid for as follows:

## **GENERAL CONDITIONS**

When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner of the service connection, the Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the Plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the Plans or is in a position different from that shown on the Plans and were it in the position shown on the Plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, the Developer will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with Article 7 or will make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with Article 7 herein.

No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether said cost is required to be borne by the owner of the utility.

The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

### 2.1.5 Existing Utility Lines; Removal, Relocation

2.1.5.1 *Main or Trunkline Facilities.* If the Contractor while performing the Contract discovers utility facilities not identified in the Contract Documents, Contractor shall notify the Developer and utility in writing prior to commencing work.

The owner of the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

The Contractor shall exercise reasonable care and shall be compensated by the Developer for the actual verified field costs of locating, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities located in a substantially different location than in the Plans and Specifications, and for equipment in use on the project necessarily idled during such work. This Work shall be performed in accordance with Article 7 of these General Conditions.

2.1.5.2 *Assessment.* Nothing in these subparagraphs shall be deemed to require the Developer to indicate the presence of existing service laterals or appurtenances whenever the presence



## **GENERAL CONDITIONS**

of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site and could be inferred from the Main or Trunkline shown on the Drawings.

2.1.5.3 *Notification.* If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the Developer in the Contract Documents. Contractor shall, within five (5) days, notify the Developer and the utility in writing. If Contractor fails to notify the Developer within forty eight hours after discovery of any utility facilities not identified by Developer in the Contract Documents, Contractor waives all rights to be compensated for any extra Work or damages resulting from such discovered utilities.

### 2.1.6 Easements

Developer shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract Documents.

## 2.2 **DEVELOPER'S RIGHT TO CARRY OUT THE WORK DUE TO PARTIAL DEFAULT IN A SPECIFIC SEGREGATED AREA OF WORK (48 HOUR NOTICE TO CURE AND CORRECT)**

If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the Developer may provide forty-eight (48) hour written notice to cure (a shorter period of time in the case of Emergency or a critical path delay as defined in Article 2.2.1) Contractor's Partial Default in a specific segregated area of work. The Developer's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

1. Failure to supply adequate workers on the entire Project or any part thereof;
2. Failure to supply a sufficient quantity of materials;
3. Failure to perform any provision of this Contract;
4. Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
5. Cases of bona fide emergency;
6. Failure to order materials in a timely manner;
7. Failure to prepare Deferred Approval items or Shop Drawings in a timely manner;
8. Failure to comply with Contractor's Baseline or Update Schedule, meet critical Milestones which would result in a delay to the critical path, or delay the Contract Time;
9. Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.
10. Failure to meet the requirements of the Americans with Disabilities Act;
11. Failure to complete Punch List work;

**GENERAL CONDITIONS**

12. Failure to proceed on an Immediate Change Directive
13. Failure to correct a Notice of Deviation

If during the forty eight (48) hour period, the Contractor fails to Cure and correct the deficiency noted in the 48 hour notice of Partial Default with diligence and promptness, the Developer may correct such deficiencies without prejudice to other remedies the Developer may have, including a Termination for Cause as set forth in Article 14. If there are inadequate funds remaining the Project balance or in the Retention Escrow to address at least 150% of the costs set forth in the Article 2.2 notice, the Developer may copy the Surety on the written notice of Partial Default. If a notice to the Surety is provided, except in the cases of emergency or critical path delay, the Surety has the option to take over and complete the Work described in the written notice if Surety personally delivers notice to Developer that it intends to perform such work. In the case where written notice has been provided, the Developer shall allow Surety seven (7) days to perform the Work.

2.2.1 Service of Notice of Partial Default with Right to Cure

A written notice of Partial Default and right to cure under Article 2.2 (“Article 2.2 Notice” or “Notice of Partial Default”) shall be served by e-mail (with a copy provided by regular mail) to the e-mail address provided on the Bid submitted and copied to the Project Superintendent.

2.2.2 Shortened Time for Partial Default in the Case of Emergencies.

In an Emergency situation, the Developer may correct any of the deficiencies described in Article 2.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to cure, if any.

2.2.3 Shortened Time for Partial Default in the Case of Critical Path Delay

In the case of critical path delay, the Developer may correct any of the deficiencies described in Article 2.2 without prejudice to other remedies providing service of written notice of critical path delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the critical path and prescribe the length of shortened time to cure, if any.

2.2.4 Written Notice of Partial Default to be Deducted by Deductive Change Order

The Developer shall have the right to determine the reasonable value of the Article 2.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 7.7.4.

**GENERAL CONDITIONS****ARTICLE 3  
THE CONTRACTOR****3.1 SUPERVISION AND CONSTRUCTION PROCEDURES****3.1.1 Contractor**

The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall not perform the Work without utilizing the Contract Documents or, where required, approved Submittals, Shop Drawings, or samples for any such portion of the Work. If any of the Work is performed by contractors retained directly by the Developer, Contractor shall be responsible for the coordination and sequencing of the work of those other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 6 and Article 8. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:

3.1.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Plans and Specifications. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of their duties.

3.1.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Plans and Specifications and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved Plans and Specifications, the Contractor shall correct the Work immediately.

**3.1.2 Contractor Responsibility to Study the Plans and Specifications**

All inconsistencies or timing or sequences which appear to be in error in the Plans and Specifications shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved Plans, Specifications, change orders, construction change documents, and as required by law. (See Title 24, Section 4-343)

**3.1.3 All Work Under the Direction of Inspector**

Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)

**3.1.4 Contractor to Establish Timing and Protocol with Inspector**

Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance

## **GENERAL CONDITIONS**

of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.

For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 1.17 for further discussion.

### 3.1.5 Verified Reports

The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Close-Out of the Project (see Article 9.9), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.

Contractor shall fully comply with any and all reporting requirements of Education Code sections 17315, et seq., in the manner prescribed by Title 24, as applicable.

### 3.1.6 Contractor Responsibility

The Contractor shall be responsible to the Developer for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

### 3.1.7 Obligations not Changed by Architect's Actions

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

### 3.1.8 Acceptance/Approval of Work

The Contractor shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent Work thereon.

## **3.2 SUPERVISION**

### 3.2.1 Full Time Supervision

Unless personally present on the Project site where the Work is being performed, the Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the Developer. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the Developer. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the Developer or any other Developer Representative (including CM in the cases where the Developer has a CM representative). All

## **GENERAL CONDITIONS**

Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to Developer (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of Developer, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify Developer and Architect in writing. Contractor shall provide a replacement superintendent approved by the Developer prior to performing additional work.

### 3.2.2 Staff

Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

### 3.2.3 Right to Remove

Developer shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.

### 3.2.4 Minimal Impact

The Contractor shall conduct all Work with as minimal impact as commercially practicable to any student instruction (or any other student activity) at the Property.

## **3.3 LABOR AND MATERIALS**

### 3.3.1 Contractor to Provide

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits 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.

### 3.3.2 Quality

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the Developer, including furnishing the Developer with bona fide copies of invoices for materials or services provided on the Project. All



## **GENERAL CONDITIONS**

labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other school construction.

### 3.3.3 Replacement

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the Developer, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the Developer.

### 3.3.4 Discipline

The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the Developer concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.

### 3.3.5 Fingerprinting (Applicable at the time Project is Occupied and on all Projects where Workers will come in Contact with Pupils, such as Modernization Projects)

If applicable, Contractor shall comply with the applicable provisions of Education Code section 45125.1 in a method as determined by the Developer. Pursuant to Education Code section 45125.1, Contractor shall either conduct criminal background checks of all employees of Contractor assigned to the Project site, and shall certify that no employees who have been convicted of serious or violent felonies, as specified in Education Code section 45125.1, will have contact with pupils, by utilizing the Certification Regarding Background Checks and the corresponding Attachment "A" as found in the Contract Documents or shall be separated by a physical barrier from students.

If it is determined that Contractor must provide certification of employees, as part of such certification, Contractor must provide the Developer with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, Contractor shall not utilize any employees who are not included on the above-referenced list.

At Developer's sole discretion, Developer may make a finding, as authorized under Education Code section 45125.1, that Contractor's employees will have only "limited contact" with pupils. Contractor's failure to comply with this law shall be considered a material breach of this Agreement upon where this Agreement may be terminated, at Developer's sole discretion, without any further compensation to Contractor.

In the case of new construction Projects where there are no students, if the Project Schedule provides for Beneficial Occupancy or portions of the Project or if the Project should be delayed, then Contractor, at no additional costs, shall meet the requirements of either fingerprinting or providing a physical barrier as required by the Developer.

### 3.3.6 Noise, Drugs, Tobacco, and Alcohol

## **GENERAL CONDITIONS**

Contractor shall take all steps necessary to insure that employees of Contractor or any of its Subcontractors' employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project. Contractor shall further prevent any of its employees or its Subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the Project. Likewise, Contractor shall prevent its employees or Subcontractor's employees from bringing any animal onto the Project. Contractors shall not violate any written school policies.

### 3.3.7 Delivery of Material

Contractor shall place orders for materials or equipment so that the Work may be completed in accordance with the Construction schedule for the Work as set forth in Article 8 of this Agreement. Contractor shall, upon demand from the Architect, furnish to the Architect documentary evidence including, but not limited to purchase orders, invoices, bills of materials, work orders and bills of lading, showing that orders have been placed. Contractor shall have a system to receive materials and to ensure that the proper materials are being delivered, including in the case of critical materials to the Project, checking the delivery against Shop Drawings and ensuring that the materials meet the requirements of not only the Plans and Specifications, but also the approved Shop Drawings and Submittals and in conformance with Contractor's plan for delivery of materials (including but not limited to Contractor's representations in the Schedules for the Project and Contractor's equipment and materials schedule under Article 3.7.2.2). Contractor shall be responsible for all costs of accepting non-conforming materials delivered to the Project given Contractor's responsibilities and system for acceptance of deliveries. Contractor shall notify Inspector and Developer Representative (including CM) as early as possible, in writing, of the delivery of materials for the Project. The deliveries shall include documentation identifying the shipment sufficiently so that the Inspector, Architect or Developer Representative (including CM) may review the materials that are received. Under no circumstances shall materials be delivered to the Project site that are meant for another Project.

### 3.3.8 Liens and Other Security Interests of Subcontractors and Material Suppliers

No material, supplies, or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to Developer free from any claims, security interests, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to place a lien upon the premises or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise Developer as to its owner within five (5) days of such installation in writing, prior to making the installation.

Contractor agrees to indemnify, defend and hold the Developer and LAUSD harmless from any liens, stop notices, or assertion of security interests, including judgments and levies. If after written notice Contractor fails to address the lien, stop notice, or other security interest, the Developer may proceed to address the lien, stop notice or claim and seek reimbursement from Contractor.

### 3.3.9 Title to Materials

## **GENERAL CONDITIONS**

The title to new materials or equipment for the Work of this Contract shall remain with Contractor until incorporated in the Work of this Contract until final acceptance of the Project; no part of said materials shall be removed from its place of storage, and Contractor shall keep an accurate inventory of all said materials and equipment in a manner satisfactory to the Developer or its authorized representative. Responsibility for materials remains with Contractor and Contractor shall replace materials in case of loss. Developer similarly may pay for materials stored off site, but Contractor shall remain responsible for the materials that are stored off site.

### 3.3.10 Assemblies

For all material and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary, (including engineering as specifically required with Shop Drawings or Deferred Approvals) for complete assemblies and complete working systems. Incidental items not indicated on the Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized in the Contract Documents in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and Specifications.

### 3.3.11 Noise Control

The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If school is in session at any point during the progress of the Project, and, in the Developer's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the school, at the Developer's request, the Contractor shall schedule the performance of all such Work around normal school hours or make other arrangements so that the Work does not cause such disruption or disturbance. There are specific periods of testing at operational schools and it is critical that Contractor control noise during periods of testing. In no event shall Contractor have a right to receive additional compensation or an extension to the Contract time as a result of any such rescheduling or the making of such arrangements. These controls shall be implemented during site preparation and construction. All noise related issues, including school operations, and noise during testing should be detailed in the Schedule provided pursuant to Article 8

## **3.4 WARRANTY**

The Contractor warrants to the Developer and Architect that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty to Developer includes, but is not limited to, the following representations:

3.4.1 In addition to any other warranties provided elsewhere, Contractor shall, and hereby does, warrant all Work after the date of Notice of Completion of Work by Developer and shall repair or replace any or all such Work, together with any other Work, which may be displaced in so doing that may

## **GENERAL CONDITIONS**

prove defective in workmanship or materials within a one (1) year period from date of Final Completion which shall be no later than the final date of Punch List as noted at Article 9.11) without expense whatsoever to Developer, ordinary wear and tear, unusual abuse or neglect excepted. Developer will give notice of observed defects with reasonable promptness. Contractor shall notify Developer upon completion of repairs.

3.4.2 In the event of failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, Developer is hereby authorized to proceed to have defects repaired and made good at expense of Contractor who hereby agrees to pay costs and charges therefore immediately on demand.

3.4.3 If, in the opinion of the Developer, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the Developer, the Developer will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the Developer's requirements for correction within a reasonable time as determined by the Developer, the Developer may, notwithstanding the provisions of this article, proceed to make such correction or attention which shall be charged against Contractor. Such action by the Developer will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this Contract.

3.4.4 This Article does not in any way limit the guarantee on any items for which a longer warranty is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish Developer all appropriate guarantee or warranty certificates upon completion of the project.

### **3.5 TAXES**

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Developer is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

### **3.6 PERMITS, FEES AND NOTICES**

#### **3.6.1 Payment**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are necessary after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Developer shall be responsible for all testing and inspection as required by the DSA on-site or within the distance limitations set forth in Article 13.5.2, unless a different mileage range is specified in the Supplemental Conditions.

3.6.1.1 *DSA Fees.* DSA policy is to charge CCD review fees for processing and approval of changes in the Plans and Specifications through the Construction Change Document process. Contractor is specifically directed to the current DSA IR A-30 which provides fee structure and charges that will be incurred for proceeding with respect to the CCD process, a process that must be followed for each change in the Plans and Specifications.

#### **3.6.2 Compliance**

**GENERAL CONDITIONS**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work. Specifically, the Division of State Architect provides State oversight of the Project and enforcement of Title 24 rules and regulations. Contractor is directed to the DSA website. There will be local governmental oversight from City, County or both. Finally, Regional Water Quality Control Board, State Fire Marshall, local fire marshal, Department of Industrial Relations, Department of Labor Standards Enforcement, and Air Quality Management Developer (Local and State) are some of the agencies that provide oversight and may require specific permits, fees, or provide oversight over the Project. Contractor represents understanding and specialized knowledge of the rules governing school Developers and Contractor shall maintain compliance over the applicable rules and will file all documents required in order to ensure compliance with State, local, and other rules that apply to the Project.

3.6.3 Responsibility

The Contractor shall perform all Work in conformance with every law, statute, ordinance, building code, rule or regulation. The Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or project delay.

Pursuant to Title 24 Section 4-343(b):

“Contractor shall carefully study the approved Plans and Specifications and shall plan a schedule of operations well ahead of time.... All inconsistencies or items which appear to be in error in the Plans and Specifications shall be promptly called to the attention of the architect or registered engineer, through the inspector, for interpretation or correction.”

To help Contractor plan its operations, Contractor is directed to study the current version of the DSA 152 Inspection Card Manual identifying the exact steps the Inspector is to follow in the review and sign off process for the DSA 152. The DSA 152 Inspection Card Manual provides specific detail as to the order of operations, review items and compliance items beyond the Specifications and Plans which are reviewed for DSA compliance. The most current version of this manual is located on DSA’s website.

Contractor is also specifically directed to the time periods for posting of Special Inspection Reports and Inspector Notifications under DSA PR 13-01 since the timing of Inspection is not a Governmental Entity related delay.

**3.7 SUBMITTALS REQUIRED AT THE COMMENCEMENT OF THE PROJECT**

3.7.1 Requirements Within Ten (10) Calendar Days

Within ten (10) calendar days after Notice to Proceed, Contract shall submit the following:

- 3.7.1.1 Detailed Schedule of Values (See Article 9.2)
- 3.7.1.2 Submittal Listing and Schedule for Submittals
- 3.7.1.3 Critical Path Baseline Schedule (See Article 8)

3.7.2 Requirements Within Thirty-Five (35) Calendar Days



## **GENERAL CONDITIONS**

Within thirty-five (35) calendar days after Notice to Proceed, Contractor shall submit the following:

3.7.2.1 *All Submittals for the Project* except those specifically agreed upon by Developer and Architect, in writing, and shall be specifically incorporated into the Submittal section of the Schedule so as to not delay the Work. The agreement to allow a later Submittal does not mean that Article 3.3.7 is waived. Contractor shall order materials and ensure prices are honored and secured for the Project.

- a. Structural Steel may be included as a later Submittal than 35 days if Structural Steel is a significant portion of the Work, at least one or some of the Project is a structural steel structural system, or as specifically agreed upon by the Architect or Developer.
- b. It is specifically agreed that submissions of structural steel Submittals shall not be piecemeal (unless some portion is requested separately by the Developer or Architect), shall provide complete designs, shall be stamped by the structural steel Subcontractor, Contractor, and structural steel Subcontractor's structural engineer at time of submission and as further addressed in Article 3.9.
- c. In no case shall the submission of structural steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone

3.7.2.2 *Exceptions to Submittal Within Thirty-Five (35) Days by Written Agreement.* A written request detailing the specific reasons for a submission later than 35 days due to complexity of design or non-critical path status of the Submittal shall be submitted at the time the Baseline Schedule is submitted. The Baseline Schedule shall not include a delayed Submittal until written agreement is provided. In addition to the request for providing a Submittal after the thirty-five (35) day period, a copy of the Contract with the Subcontractor who shall be performing the Submittal, a written statement from the Subcontractor verifying that work has commenced on the Submittal and providing Subcontractor's own schedule of Milestones and completion dates, and a corresponding Submittal designation in the Schedule as required under Article 8. Approval of a delayed Submittal shall not result in any increase in the Contract Price or result in an extension of time for the completion of the Project.

3.7.2.3 *Piecemeal Submissions of Submittals.* Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete. .

### **3.8 DOCUMENTS, SAMPLES, AND COMPUTER AT THE SITE**

The Contractor shall maintain at the Site for the Developer one current copy of the California Building Code, Titles 19 and 24 of the California Code of Regulations, any other document required by DSA, and one record copy of the Drawings, Specifications, Addenda, Change Orders, and other

## **GENERAL CONDITIONS**

Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required Submittals. These documents shall be available to the Architect and shall be delivered to the Architect for delivery to the Developer upon completion of the Work.

Contractor shall have an operational computer with internet access so Contractor can review and post documents as required for the Project, including but not limited to the filing and posting of DSA required documents for the Project.

Contractor shall be prepared to review documents posted to the DSA Project website.

### **3.9 SUBMITTALS INCLUDING SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

#### **3.9.1 Definitions**

3.9.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants Deferred Approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to access floors, bleachers, elevator guide rails and related elevator systems, exterior wall systems - precast concrete, glass fiber reinforced concrete, etc., skylights, window wall systems, storefronts, stage rigging, and other systems as noted in the Contract Documents. (Also see Article 1.2.2 and 3.9.3)

3.9.1.2 *Shop Drawings.* The term “Shop Drawings” as used herein means Drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting Drawings; manufacturer’s standard Drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other Drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.

3.9.1.3 *Manufactured* applies to standard units usually mass-produced, and “Fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop Drawings shall: establish the actual detail of all manufactured or Fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.9.1.4 *Submittals* is a term used interchangeably and sometimes refers to Shop Drawings, Product Data, and samples since all Subcontractor submissions are tracked in a Submittal Log and may include any of the noted items. However, generally, a Submittal is a manufacturer’s product information and Product Data including description, characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.

3.9.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, Fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality,

## **GENERAL CONDITIONS**

construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

### 3.9.2 Shop Drawings.

3.9.2.1 *When Shop Drawings Are Required.* Shop Drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various Subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each Subcontractor or trade will provide Shop Drawings in a BIM format or other format as agreed by Developer.

3.9.2.2 *Purpose for Shop Drawings.* Shop Drawings are the Contractor's manufacturer, Subcontractor, supplier, vendor or the Contractor's detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect's design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor's Subcontractor's plan for installation or assembly based on the design in the Specifications and Contract Documents. The Shop Drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator's version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Construction Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer's material Specifications, "catalog cut sheets," and other manufacturer's information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect's and Engineer's approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.

3.9.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all Product Data from equipment manufacturers. "Product Data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

3.9.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The Shop Drawings are not a reproduction of the architectural or engineering Drawings. Instead, they must show more detail than the Construction Documents and details the fabrication and/or installation of the items to the manufacturer's production crew or Contractor's installation crews.

3.9.2.5 *Shop Drawings Engineering Requirements:* Some Shop Drawings require an engineer stamp to be affixed on the Drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.

3.9.2.6 *DSA Approvals Required Prior to Work.* No work on a Shop Drawing that requires DSA approval may proceed until DSA approval is received. Contractor has provided DSA

## **GENERAL CONDITIONS**

approval time and allowed adequate time for corrections in Contractor's Schedule as required pursuant to Article 8.

3.9.2.7 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" all qualifications, departures, or deviations from the Contract Documents. Shop Drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.

### 3.9.3 Deferred Approvals

Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for Deferred Approvals at Division 1 of the Specifications. All Deferred Approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 have specific requirements for Deferred Approval as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 3.9.6

3.9.3.1 *DSA Approvals Required Prior to Work.* No work on a Deferred Approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor's Schedule as required pursuant to Article 8.

### 3.9.4 Submittals and Samples

3.9.4.1 *Information Required With Submittals:* Manufacturer, trade name, model or type number and quantities: Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the Specifications and addenda.

3.9.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.

3.9.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.

3.9.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The Contractor should confirm that finish requirements in the Specifications are being met by the product.

## **GENERAL CONDITIONS**

3.9.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.

3.9.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the Developer is utilizing items Standardized or pre-selected by Developer, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications or Specification Section 1, samples shall be submitted in duplicate.

3.9.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.

3.9.4.8 *Transmittal letter.* All samples shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number.

3.9.4.9 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions. Each tag or sticker shall have clear space for the review stamps of Contractor and Architect.

3.9.4.10 *Architect's Review.* The Architect will review and, if appropriate, approve submissions and will return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or Developer's) standard procedures. In the cases where a CM is hired by the Developer, CM may be the party that receives and performance logging and initial processing of the Samples. CM may, in some cases, reject samples that are not in conformance with Contract requirements.

### 3.9.5 Submittal Submission Procedure

3.9.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop Drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. Refer to Division 1. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements. Submittal Procedures for further information.

3.9.5.2 *Copies Required.* Each Submittal shall include one (1) legible, reproducible (if electronic is available, electronic copies shall also be provided) and five (5) legible prints



## **GENERAL CONDITIONS**

of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the Developer or Architect. See also Division 1.

3.9.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, Developer or CM and shall resubmit, as required by Architect or CM, corrected copies of Shop Drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals of Shop Drawings, Product Data, or samples are subject to charge to the Contractor pursuant to Article 4.5.

3.9.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a Shop Drawing or sample submission or other Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.

3.9.5.5 *Developer's Property.* All Submittals, Shop Drawings, computer disks, BIM modeling information, clash checks, schedules, annotated Specifications, samples and other Submittals shall become the Developer's property upon receipt by the Developer or Architect.

### 3.9.6 Schedule Requirements for Submittals

Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), in accordance with Contractor's "Schedule for Submission of Shop Drawings and Samples" as required in the scheduling portion of the General Conditions at Articles 8 and the Specifications (as long as the Specifications do not conflict with General Conditions. In the case of conflict, the conflicting provision shall be controlled by the General Conditions and the remaining Specifications sections shall be interpreted as if the general conditions language is inserted) with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than thirty five (35) days after the Notice to Proceed is issued except in the specific cases noted as an exception under Article 3.7.2.1. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Shop Drawings and samples submitted in accordance with Division 1 and the Schedule. Each Subcontractor shall submit all Shop Drawings, samples, and manufacturer's descriptive data for the review of the Developer, the Contractor, and the Architect through the Contractor.

3.9.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.

### 3.9.7 General Submittal Requirements

3.9.7.1 *Contractor Submittal Representations and Coordination.* By submitting Shop Drawings, Product Data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant

## **GENERAL CONDITIONS**

data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

3.9.7.2 *Contractor Coordination.* Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Shop Drawings:

“[Contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the Shop Drawings and Submittals that does not conform to the Contract Documents. This Shop Drawing or Submittal has been coordinated with all other Shop Drawings and Submittals received to date by me as Contractor and this duty of coordination has not been delegated to Subcontractors, material suppliers, the Architect, or the Engineers on this Project.”

\_\_\_\_\_  
Signature of Contractor and date

3.9.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, Product Data, samples, etc., shall not deviate from the *requirements* of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Article 3.10.4. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Shop Drawings. However, Shop Drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 3.10.4, “Substitutions.”

3.9.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by Developer and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Shop Drawings in accordance with the Contract Documents.

3.9.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially, will be returned not reviewed by the Architect for resubmission by the Contractor. Refer to Submittal Procedures of the Specifications for additional information. The Contractor shall be responsible for any related delays and shall not be the basis for any Claim.

3.9.7.6 *Shop Drawings and Submittals Shall Not Be Used as a Method to Make a Substitution.* Shop Drawings and Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Shop Drawings, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved Plans and Specifications, the Contractor is still responsible for the change and the Architect or the Developer may require the Shop Drawings be revised to properly reflect the approved Contract Documents. The Architect or Developer may also require that the Contractor bear all costs under Article 4.5 and consequential damages associated with a CCD to revise Plans and Specifications to accommodate the deviation from approved Plans and Specifications.

3.9.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, Product Data,

## **GENERAL CONDITIONS**

samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in Shop Drawings or schedules, for proper fitting of the Work, coordination of the differing Subcontractor trades and Shop Drawings and Work which is not indicated on the Shop Drawings at the time of submission of Shop Drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

### **3.10 SUBSTITUTIONS**

#### **3.10.1 Definition**

A Substitution is a change in product, material, equipment, or method of construction from those required by the Construction Documents proposed by the Contractor. For this Project, a Substitution is subject to the filing of a Construction Substitution Request Form at the time of bid and meeting the requirements of this Article.

#### **3.10.2 One Product Specified**

Unless the Specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction or any specific name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Subject to the requirements of properly submitting a Substitution Request for as Addressed in Article 3.10.4, the Contractor may, unless otherwise stated, offer any material, process, article, etc., which shall be materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Documents.

#### **3.10.3 Products Specified Which Are Commercially Unavailable**

If the Contractor fails to make a request for substitutions for products, prior to the submission of its bid, and such products subsequently become commercially unavailable, the Contractor may request a substitution for such commercially unavailable item. The decision to grant this request is solely at the Developer's discretion. The written approval of the Developer, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. The Developer may condition its approval of the substitution upon the delivery to Developer of an extended warranty or other assurances of adequate performance of the substitution as well as an equitable deduction in the Contract Price should the substituted item cost less than the Specified Item. All risks of delay due the approval of a requested substitution by the DSA, or any other governmental agency having jurisdiction, shall be on the requesting party. All additional costs, DSA review costs, all procurement and construction delays, and all costs for review by the Architect or its consultants shall be the responsibility of the Contractor and will be deducted from Contractor's pay request.

## **GENERAL CONDITIONS**

### 3.10.4 Substitution Request Form

Requests for substitutions of products, materials, or processes in place of a Specified Item must be in writing on the Developer's Substitution Request Form ("Request Form") at the time of submitting bids to the Developer, except as provided for in Article 3.10.3.

The Request Form must be accompanied by evidence as to whether the proposed substitution:

- a. Is equal in quality/service/ability to the Specified Item;
- b. Will entail no changes in detail, construction, and scheduling of related work;
- c. Will be acceptable in consideration of the required design and artistic effect;
- d. Will provide no cost disadvantage to the Developer;
- e. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
- f. Will required no change of the construction schedule.

In completing the Request Form, the bidder must state, with respect to each requested substitution, whether the bidder will agree to provide the Specified Item in the event that the Developer denies the bidder's request for such requested substitution. In the event that the bidder has agreed in the Request Form to provide the Specified Item and the Developer denies the bidder's requested substitution for a Specified Item, the bidder shall provide the Specified Item without any additional cost or charge to the Developer.

After bids are opened, the apparent lowest bidder shall provide, within five (5) days of opening such bids, any and all Drawing, Specifications, samples, performance data, calculations, and other information, as may be required to assist the Architect, CM and the Developer in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the bidder.

After the Developer's receipt of such evidence by the bidder, the Developer will make its final decision as to whether the bidder's request for substitution for any Specified Items will be granted. The decision as to whether a proposed request for substitution is equal to a Specified Item shall be at the sole discretion of the Developer. Any request for substitution that is granted by the Developer shall be documented and processed through a Change Order. Contractor must submit a complete Submittal of the requested substitution and a Shop Drawing showing configuration, dimensions, and other critical information associated with the substitution that meets the requirements of Article 3.9. The Developer may condition its approval of any substitution upon delivery to the Developer of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of delay due to approval by the DSA or any other governmental agency having jurisdiction shall be on the bidder.

If the Architect and Developer accept a proposed substitution, the Contractor agrees to pay for all DSA review costs, engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the Division of the State Architect, if required, and to make all changes and adjustments in

## **GENERAL CONDITIONS**

materials or the work of all trades directly or indirectly affected by the substituted item or items at no cost to the Developer.

### **3.10.5 Substitution Requests After Bid**

The Developer, in its sole discretion, may accept a request for substitution by the Contractor or may request Contractor substitute a specified item. Any substitutions requested after bids are opened shall be subject to the same conditions and requirements set forth in Article 3.10.4 above. If any substitutions, that in the Developer or Architect's determination, results in a credit to the Developer, the credit amount shall be agreed upon in writing, otherwise, the request for substitution shall be deemed denied.

## **3.11 INTEGRATION OF WORK**

### **3.11.1 Scope**

The Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. Contractor shall be responsible for ensuring that all trades are coordinated and scheduled so as to ensure the timely and proper execution of the work. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to Developer. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

### **3.11.2 Structural Members**

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk and subject to replacement at its own expense without reimbursement under the Contract. Schedule delays resulting from Agency approvals for unauthorized work shall be the Contractor's responsibility.

### **3.11.3 Subsequent Removal**

Permission to patch any areas or items of the Work shall not constitute a waiver of the Developer's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the Developer, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

## **3.12 CLEANING UP**

### **3.12.1 Contractor's Responsibility to Clean Up**

Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the Architect within five (5) days of request.



## **GENERAL CONDITIONS**

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the Project by the Developer. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

### 3.12.2 General Final Clean-Up

Upon completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Contractor shall clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program including, but not limited to, the performed of the following:

- a. Clean interior and exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration;
- b. Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean;
- c. Repair or replace any damaged materials. Replace any chipped or broken glass;
- d. Remove any and all stains;
- e. Remove labels that aren't permanent labels;
- f. Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds;
- g. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site;
- h. Remove temporary film that remains on any hardware, doors or other surfaces; and
- i. Seal the bottom and tops of all doors.

### 3.12.3 Special Clean-Up.

In addition to the general cleaning, the following special cleaning shall be done at the completion of the Work in accordance with the Specifications including, but not limited to:

- a. Remove putty stains from glazing, then wash and polish glazing;
- b. Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work;
- c. Remove temporary protection and clean and polish floors and waxed surfaces;

## **GENERAL CONDITIONS**

- d. Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint;
- e. Wipe surfaces of mechanical and electrical equipment;
- f. Remove spots, soil, plaster and paint from tile work, and wash tile;
- g. Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces;
- h. Vacuum-clean carpeted surfaces; and
- i. Remove debris from roofs, down spout and drainage system.

### **3.12.4 Failure to Cleanup**

If the Contractor fails to clean up as provided in the Contract Documents, the Developer may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 2.2 and seek a Deductive Change Order.

## **3.13 ACCESS TO WORK**

The Contractor shall provide the Developer, the Architect, Engineers and the Inspector of Record, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access so that Developer's representatives may perform their functions.

CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES AS ADDRESSED IN ARTICLE 6.

### **3.13.1 Special Inspection, Inspections or Tests Out of State, Out of Country or Remote from Project**

If Contractor has a Subcontractor or supplier that requires in plant or special inspections or inspections or tests that are out of the country, out of the state, or a distance of more than 200 miles from the Project site, the Special Inspector or Inspector shall be provided access so the special inspection or inspection may occur in the remote location. In some cases, the DSA Inspector may also require access in addition to Special Inspectors and individuals performing tests. Inspections/tests shall occur during normal work hours. See also Article 4.3.6.

## **3.14 ROYALTIES AND PATENTS**

### **3.14.1 Payment and Indemnity for Infringement**

Contractor shall hold and save the Developer and its officers, agents, and employees, LAUSD, the Construction Manager, the Architect, and the Architect's consultants harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Developer, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the Developer, the Architect, or the Architect's consultants.

**GENERAL CONDITIONS**3.14.2 Review

The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

**3.15 INDEMNIFICATION**3.15.1 Contractor

See Agreement Form. Contractor shall ensure that its contract with each of its Subcontractors contains provisions requiring the Subcontractors to defend, indemnify and hold harmless the Developer, LAUSD, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the indemnity and hold harmless language in the Agreement Form.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the Developer, LAUSD, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Work; and (5) any claims of violation of the Americans with Disabilities Act ("ADA")

**3.16 SUBMISSION OF DAILY REPORTS**3.16.1 General

By 10:00 a.m. on the following business day, the Contractor shall submit a Daily Report to the Inspector and copy the Architect for the previous day's Work. If there is a Construction Manager, the original Daily Report is to be provided to the Construction Manager and copies sent to the Architect and the Inspector. Daily Reports shall be prepared on forms approved by the Developer, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day. The Developer reserves the right to note inconsistencies or inaccuracies in the Daily Reports. In such cases, pertinent notes shall be entered by each party to explain points which cannot be resolved that day. Each party shall retain a signed copy of the report. Daily Reports by Subcontractors or others shall be submitted through the Contractor.

3.16.2 Labor

The Daily Report shall show names of workers, classifications, hours worked and hourly rate. The locations where work occurred shall also be identified in the Daily Report. Project superintendent expenses are not allowed.

3.16.3 Materials

The Daily Report required shall describe and list quantities of materials used and unit costs.

3.16.4 Equipment

## **GENERAL CONDITIONS**

The Daily Report required shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost. Move-on and move-off fees shall be noted.

### 3.16.5 Other Services and Expenditures

Other services and expenditures shall be described in the Daily Report in detail as the Developer requires.

### 3.16.6 Failure to Submit Daily Report

If Contractor does not submit its Daily Report by 10 am the next business day, the Inspector of Record shall prepare a Daily Report addressing each of the above items. The cost for the Inspector's services to prepare the Daily Report shall be addressed through a Deductive Change Order under Article 7.7.4.

## **3.17 AS-BUILT DRAWINGS AND ANNOTATED SPECIFICATIONS**

Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to Specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a Specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly.

Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered.

The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the Developer and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold Progress Payments pursuant to Article 9.6.

### 3.17.1 Upon Beneficial Occupancy

Contractor shall obtain and pay for reproducible Plans upon Beneficial Occupancy. Contractor shall deliver Plans to Developer Representative (Construction Manager if one is hired for the Project).

### 3.17.2 As-Built at Completion of Work

Upon completion of the Work and prior to and as a condition precedent to Application for Retention Payment, the Contractor will provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the Developer. Contractor shall certify the As-Built as a complete and accurate reflection of the actual construction conditions of the Work by affixing a stamp indicating the Drawings are As-Built and certifying accuracy on the final set of As-Built. Failure to

## **GENERAL CONDITIONS**

deliver a complete As-Built set of Drawings may result in significant withholdings to ensure Work is properly documented. See Article 9.9.1.

### **3.17.3 Log of Control and Survey Documentation**

Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built Drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Built.

### **3.17.4 Record Coordinates for Key Items**

Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.

### **3.17.5 BIM As-Built Drawings**

If BIM is utilized for the Project, then an electronic version of such As-Built Drawings and Annotated Specifications will be delivered to Developer (in an acceptable format to Developer).

## **3.18 EQUIPMENT MANUALS**

Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in logical, sequential order, labeled, indexed, and placed in three-ring binders. At the completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Retention Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in logical, sequential order, labeled, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Developer through the Architect.

## **3.19 DIR REGISTRATION**

Strict compliance with all DIR registration requirements in accordance with Labor Code sections 1725.5 and 1771.1 is a material obligation of the Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by the Contractor and all of its subcontractors of any tier. The failure of the Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the Work is a material breach of the Contract and subject to termination for cause.

An affirmative and ongoing obligation of the Contractor under the Contract Documents is the verification that all subcontractors of any tier are at all times during performance of the Work are in full and strict compliance with the DIR registration requirements. The Contractor shall not permit or allow



## **GENERAL CONDITIONS**

any subcontractor of any tier to perform any Work without the Contractor's verification that all subcontractors are in full and strict compliance with the DIR registration requirements. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1. Contractor or its subcontractors of any tier shall not be entitled to any additional costs or time arising from or in any way related to compliance with the DIR registration requirements.

**GENERAL CONDITIONS****ARTICLE 4  
ADMINISTRATION OF THE CONTRACT AND CLAIMS****4.1 ARCHITECT****4.1.1 Replacement of Architect**

In the case of the termination of the Architect, the Developer may appoint an Architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be the same as that of the former Architect.

**4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT****4.2.1 Status**

Pursuant to Titles 2 of the California Code of Regulations and as required pursuant to the Field Act, Education Code 17280 et seq., the Architect will provide administration of the Contract Documents and the Work, and will be the Developer's representative during construction, as well as during the one (1) year period following the commencement of any warranties. The Architect will have authority to act on behalf of the Developer only to the extent provided in the Contract Documents.

**4.2.2 Site Visits**

The Architect will visit the Site at intervals necessary in the judgment of the Architect to become generally familiar with the progress and quality of the Work and to determine in general if the Work is being performed in accordance with the Contract Documents and as otherwise required by DSA.

**4.2.3 Limitations of Construction Responsibility**

The Architect, Developer and CM shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The Architect, Developer and CM shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect, Developer and CM shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect, Developer or CM in the Architect, Developer or CM's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

**4.2.4 Communications Facilitating Contract Administration**

Except where a CM is on the Project, or as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Developer and the Contractor shall communicate through the Architect. In the cases where a CM is hired for the Project,

## **GENERAL CONDITIONS**

all communication shall be through the CM (unless otherwise directed) with copies to the Developer, Architect and Inspector. Where direct communication is necessary between the Developer and the Contractor, the Developer's communication shall be through the Developer's authorized designated person. The Architect and CM shall be promptly informed, and shall receive copies of all written communications. Contractor shall not rely upon any communications from the Developer that is not from the Developer's Representative. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor. In the case where a CM is hired for the Project, the CM shall be the main point of contact for communication of information. Copies should be sent to the Architect, Developer Representative and Inspector.

### 4.2.5 Payment Applications

The Architect will review and make recommendations to the Developer regarding the amounts due the Contractor on the Certificates for Payment pursuant to Article 9.3.4 and subject to the Inspector's review, (CM review, if applicable) and Architect's observation. This review of Payment Applications is sometimes called a "Pencil Draft." Return of a Pencil Draft shall constitute the Developer's dispute of the Payment Application that has been submitted. Contractor shall promptly respond to Pencil Drafts or Contractor's Payment Applications may be delayed. Contractor's failure to promptly respond to a Pencil Draft shall qualify as a delay in the Prompt Payment of a Request for Payment or Request for Retention.

### 4.2.6 Rejection of Work

In addition to the rights, duties, and obligations of the Inspector under this Article, the Architect may recommend to the Developer that the Developer reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect (and/or CM) may recommend to the Developer that the Developer require additional inspection or testing of the Work in accordance with Article 13.5, whether or not such Work is Fabricated, installed, or completed. Developer may have Non-conforming Work removed and replaced pursuant to Article 9.7. However, neither this authority of the Architect (or CM) 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 Architect (or CM) to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

Contractor shall, without charge, replace or correct Work found by the Developer to not be in conformance to Contract requirements. Contractor shall promptly segregate and remove rejected materials from the Project site.

This section does not address a Notice of Non-Compliance and the remedies associated with a Notice of Non-Compliance which are addressed at Article 7.1.2.

### 4.2.7 Warranties upon Completion

The Architect (and where applicable CM), in conjunction with the Inspector will conduct field reviews of the Work to determine the date of Substantial Completion and of Final Completion, shall receive and forward to the Developer for the Developer's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents (See Article 9.11 for Close-Out). The handling by the Architect (or where

## **GENERAL CONDITIONS**

applicable CM) of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

On some Projects, the Developer will take a phased occupancy of the Project. In those cases, the Developer may commence the running of warranties on the buildings, or phases that are accepted after Punch List is completed and the Developer has accepted Completion of the separate phase. A separate Notice of Completion may be filed for the separate building or phase of work and warranties shall commence for the separate phase only to the extent that warranties do not require coordination or connection to other buildings or other parts of the site and only if the warranted item is completed to its entirety in the segregated building or phased area.

If written warranties are not provided at the time the Punch List is nearing completion, Architect (with recommendations from the CM and Inspector) shall determine the dollar value of the warranties and shall make recommendation for withholdings necessary to effectuate the transfer of such warranties to the Developer for future use as part of the Punch List for the Project pursuant to Article 9.6.

Warranties are not commenced through utilizing of equipment for testing and operation as necessary to acclimate buildings or where necessary to test systems.

### 4.2.8 Interpretation

The Architect will interpret and decide matters concerning performance and requirements of the Contract Documents. Architect shall make clarifications as necessary to interpret the Contract Documents.

## 4.3 **PROJECT INSPECTOR**

### 4.3.1 General

One or more Project Inspectors employed by the Developer and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.

### 4.3.2 Inspector's Duties and DSA Noted Timelines for Inspection

All Work shall be under the observation of the Inspector. Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the Drawings or Specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

## GENERAL CONDITIONS

Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.

Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13 at Article 1.17. Inspector shall work with Contractor to present incremental approval proposals to DSA.

### 4.3.3 Inspector's Authority to Reject or Stop Work

The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

### 4.3.4 Inspector's Facilities

Within seven (7) days after the notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required. More specific requirements for the Inspector facilities may be further described under Division 1 of the Specifications.

### 4.3.5 Testing Times

The Developer will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the Developer to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be established pursuant to Article 4.3.2. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse Developer for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor.

It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. Failure to plan and pay (if applicable) for quicker delivery of Special Inspections may be counted as Float, but is not considered Governmental Delay Float under Article 8.1.4.

### 4.3.6 Special Inspections, Inspections or Tests Out of State, Out of Country or Remote from Project



## **GENERAL CONDITIONS**

If Contractor has a Subcontractor or supplier that requires in plant or special inspections, inspections or tests that are out of the country, out of the state or a distance of more than 200 miles from the Project Site, the Developer shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the Inspector/Testing Agreement with Developer, or other expenses necessary to ensure proper inspection, special inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Tester) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.

### **4.4 STOP WORK ORDER**

DSA may issue a Stop Work Order, or an Order to Comply, when either (1) the Work proceeds without DSA approval; (2) the Work proceeds without a DSA Inspector of Record, or (3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code section 17307.5(b), the Developer shall not be held liable in any action filed against the Developer for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the Developer is the basis for the issuance of the Stop Work Order.

Examples of Stop Work Orders that may be issued by DSA include DSA Bulletin 07-04 and Policy 10-01, the installation of automatic fire sprinkler systems without approved Plans, covering Work that has not been approved by Inspector on DSA Project Inspection Card (Form 152).

### **4.5 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DEVELOPER FOR PROFESSIONAL SERVICES**

If at any time prior to the completion of the requirements under the Contract Documents, the Developer is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the Developer may seek a Deductive Change Order for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. A Deductive Change Order shall be independent from any other Developer remedies and shall not be considered a waiver of any Developer rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Developer. Additional services shall include, but shall not be limited to, the following:

- a. Services made necessary by the default of the Contractor (Article 14 or Article 2.2).
- b. Services made necessary due to the defects or deficiencies in the Work of the Contractor (Article 2.2 and Article 9.6).
- c. Spurious or frivolous RFI's issued that do not conform to the requirements of Article 7.4. Issuance of the same RFI after receiving an answer from the Architect or Engineer

## **GENERAL CONDITIONS**

- d. Review of Schedules that are provided by Contractor that do not Conform with the Requirements of Article 8.
- e. Preparation of a CCD or ICD to correct a Contractor Deficiency, or Contractor Caused Notice of Non-Compliance (Article 7.3).
- f. Review of Incomplete Shop Drawings or Submittals, including the submission of Piecemeal Shop Drawings or Submittals unless piecemeal Submittals are specifically agreed upon by Developer (Article 3.9)
- g. Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- h. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to Drawings, Specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 3.10)
- i. Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order process.
- j. Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- k. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- l. Services in conjunction with more than one (1) re-review of Submittals of Shop Drawings, Product Data, samples, RFI's etc.

### **4.6 DISPUTES AND CLAIMS**

#### **4.6.1 Decision of Architect**

Disputes between Developer and Contractor involving money or time, including those alleging an error or omission by the Architect shall be referred initially to the Architect for action as provided in Article 4.6.2 within ten (10) days after Contractor's Article 7 request for Change is denied. If there is a CM, the CM shall receive the Dispute and may review and also assemble opinions and documents to assist the Architect. A decision by the Architect, as provided in Article 4.6.5, shall be required as a condition precedent to proceeding with remedies set forth in Article 4.6.9 as to all such matters arising prior to the date Retention Payment Application is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has reached Final Completion.

The condition precedent of an Architect decision shall be waived if: (1) the position of Architect is vacant; (2) the Architect has not received evidence or has failed to render a decision within agreed time limit; (3) the Architect has failed to take action required under Article 4.6.5 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the

## **GENERAL CONDITIONS**

Architect; or (4) the Claim relates to a stop notice claim not arising from any extra Change Order or Immediate Change Directive for which approval has not been provided.

### 4.6.2 Architect's Review

The Architect (and CM) will review Disputes and take one or more of the following preliminary actions upon receipt of a Dispute: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect expects to take action; (3) reject the Dispute in whole or in part, stating reasons for rejection; (4) recommend approval of the Claim; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the Surety, if any, of the nature and amount of the Claim.

4.6.2.1 *Architectural Immunity.* Architect review of Claims shall be impartial and meant to resolve Disputes. Pursuant to the case, Huber, Hunt & Nichols, Inc. v. Moore (1977) 67 Cal.App.3d 278, the Architect is provided a quasi-judicial immunity for interpreting and deciding Disputes between the Developer and Contractor.

### 4.6.3 Documentation if Resolved

If a Dispute has been resolved, the Architect (and/or CM) will prepare a Change Order or obtain appropriate documentation to document the terms for Board approval.

### 4.6.4 Actions if Not Resolved

If a Dispute has not been resolved and all documentation requested pursuant to Article 4.6.2 has been provided, the Contractor shall, within ten (10) days after the Architect's preliminary response, assemble all the documents involved in the Dispute including copies of all back-up documentation of costs and the basis for the Dispute and take one or more of the following actions: (1) modify the initial Dispute; (2) notify the Architect that the initial Dispute stands; or (3) supplement with additional supporting data and re-submit to the Architect under Article 4.6.2.

### 4.6.5 Architect's Written Decision

If a Dispute has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect, the Architect (or Architect through CM) shall provide a written decision twenty (20) days after compliance with Article 4.6.4. Upon expiration of such time period, the Architect (or Architect through CM) will render to the parties its written decision relative to the Dispute, including any change in the Contract Sum or Contract Time or both.

The Architect may also request reasonable additional time to complete Architect's written decision.

If the resolution of the Dispute by the Architect is not satisfactory to the Contractor and copies of all back-up documentation of costs and the basis for the Dispute is fully articulated in a package of material that is complete, the Contractor may then submit a Claim to the Developer under Article 4.6.9

### 4.6.6 Continuing Contract Performance

Pending final resolution of a Dispute or Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the

## **GENERAL CONDITIONS**

Developer shall continue to make any undisputed payments in accordance with the Contract (less any withholdings or offsets). If the Dispute or Claim is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before.

4.6.6.1 *Developer's Option to Submit Individual Disputes to Arbitration during Claims and Disputes Process.* At the Developer's sole option, in order to more efficiently resolve Claims during the Project and prior to the completion of the Claims Process, pursuant to Government Code section 9201, the Developer may submit individual Disputes or Claims for binding arbitration and Contractor agrees to the resolution of for each individual Dispute or Claim by an Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual disputes, such resolution is full and final as to that particular Dispute or Claim. THIS INDIVIDUAL DISPUTE ARBITRATION PROCESS IS NOT AN ARBITRATION CLAUSE AND SHALL NOT BE CONSTRUED AS AN AGREEMENT TO ARBITRATE. THIS INDIVIDUAL DISPUTES ARBITRATION PROCESS IS FOR THE SOLE PURPOSE OF STREAMLINING AND RESOLVING CLAIMS DURING CONSTRUCTION AND SHALL BE REQUESTED ON SPECIFIC INDIVIDUAL ITEMS BY THE DEVELOPER PRIOR TO RETENTION PAYMENT (EVEN IF THERE ARE DEDUCTIONS MADE FROM RETENTION PAYMENT) WHICH REPRESENTS THE FINAL COMPLETION OF THE PROJECT.

- a. If there is no Retention remaining on the Project, individual Disputes initiated prior to Project Final Completion shall continue until a final disposition of the Arbitration or resolution of the individual Claim or Dispute.
- b. No Tolling. The Arbitration process shall not toll the Disputes, Claims, or Appeals process under Article 4.6 or the requirement to submit Claims to Court under Article 4.6.9.4.

### 4.6.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface

When any excavation or trenching extends greater than four feet below the surface or if any condition involving hazardous substances are encountered:

- a. Immediately upon discovery, The Contractor shall promptly, and before the following conditions are disturbed, notify the Developer, by telephone and in writing, of the condition except:
  1. If such condition is a hazardous waste condition, Contractor's bid includes removal or disposal of hazardous substances. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice bulletin procedures of Article 7 apply.

**GENERAL CONDITIONS**

2. Subsurface or latent physical conditions at the Site differing from those indicated in the Drawings, Specifications, Soils Report, and from Contractor's own investigation under Article 2.1.
  3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.
- b. The Developer shall investigate the conditions, and if Developer finds that the conditions do materially so differ, do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order or Construction Change Document under the procedures described in the Contract.
  - c. In the event that a dispute arises between the public entity or Developer and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion Date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.6.8 Dispute Concerning Extension of Time.

If Contractor and Developer cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 8.4. Upon completion of the procedures set forth under Article 8.4, Contractor must then comply with the requirements in this Article including those set forth under Article 4.6.9.

4.6.9 Claims Procedures

Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees to comply with the Claims requirements of Article 4.6 to quickly and efficiently resolve disputes. Further, to provide a level of accuracy to the records submitted, the Developer shall have the right to audit books and records pursuant to Article 13.11 based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information.

4.6.9.1 *Procedure Applicable to All Claims*

- a. Definition of Claim: A "Claim" is where a Dispute between the parties rises to the level where backup documentation is assembled and provided to the Developer as a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the Developer. (If the Claim is for damages associated with a DSA Stop Work Order, the Contractor shall not be entitled to a request for



**GENERAL CONDITIONS**

Compensation, but shall be entitled to utilize Governmental Delay Float (See Article 8.1.5.1.))

- b. Filing Claim Is Not Basis to Discontinue Work: The Contractor shall promptly comply with Work under the Contract or Work requested by the Developer even though a written Claim has been filed. The Contractor and the Developer shall make good faith efforts to resolve any and all Claims that may arise during the performance of the Work covered by this Contract.
- c. Claim Notification: The Contractor shall within seven (7) calendar days after the written decision of the Architect, or if the time period for Architect's decision has passed under Article 4.6.1, submit a notification, in writing, with the Developer (and the Developer's CM) stating clearly the basis for the Claim. If the notification is not submitted within seven (7) days after the written decision of the Architect or the passage of time under Article 4.6.1, the Contractor shall be deemed to have waived all right to assert the Claim, and the Claim shall be denied. Claims submitted after the Retention Payment date shall also be considered null and void by the Developer. All Claims shall be reviewed pursuant to Articles 4.6.1 through 4.6.5.

The Formal Notification of Claim must be presented as follows:

- (1) The term "Claim" must be at the top of the page in no smaller than 20 point writing.
  - (2) All documentation submitted pursuant to Article 4.6 to the Architect shall be submitted with the "Claim."
  - (3) A stack of documents, copy of all Project documents, or the submission of random documents shall not constitute an adequate reference to supporting documentation.
  - (4) Any additional or supporting documentation that Contractor believes is relevant should be submitted at this time.
- d. Formal Claim Appeal Submission: If the Contractor does not concur with the Developer's decision regarding the Claim Notification, the Contractor will issue a formal Claim Appeal within fourteen (14) days of receipt of the Developer's decision and all detailed information in support of the Claim Appeal within thirty (30) days. All appeals shall be submitted before Retention Payment. If the Claim Appeal is not submitted within fourteen (14) calendar days and detailed information within thirty (30) days, the Contractor shall be deemed to have waived its right to assert the Claim and the Claim shall be denied. Contractor's failure to submit any detailed information which is in the possession of Contractor shall render such information inadmissible by Contractor at trial, arbitration or other legal proceeding.

**GENERAL CONDITIONS**

- e. Appeal Claim Format: The Contractor shall provide all written detailed documentation which supports the Claim, including but not limited to: arguments, justifications, cost, estimates, Schedule analysis and detailed documentation. The format of the Claim Appeal shall be as follows:
1. Cover letter.
  2. Summary of factual basis of Claim and amount of Claim.
  3. Summary of the basis of the Claim, including the specific clause and section under the Contract under which the Claim is made.
  4. Documents relating to the Claim, including:
    - a. Specifications sections in question.
    - b. Relevant portions of the Drawings
    - c. Applicable Clarifications (RFI's)
    - d. Other relevant information, including responses that were received.
    - e. Contractor Analysis of Claim merit.
      - (a) Contractor's analysis of any Subcontractor vendor Claims that are being passed through.
      - (b) Any analysis performed by outside consultants
      - (c) Any legal analysis that Contractor deems relevant
    - f. Break down of all costs associated with the Claim.
    - g. For Claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path in conformance with the requirements of Article 8.4 chronology of events and related correspondence.
    - h. Applicable Daily Reports and logs.
      - (a) If the Daily Reports or Logs are not available, lost or destroyed, there shall be a presumption that the lost documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
    - i. For Claims involving overhead, cost escalation, acceleration, disruption or increased costs, a full version of job costs reports organized by category of work or Schedule of Values with budget information tracked against actual costs. Any and all supporting back-up data, including the original bid (and associated original unaltered metadata).
      - (a) The metadata and bid information shall be provided confidentially and subject to a protective order to prevent dissemination to other contractors or to the public. However, the bid documentation should remain intact and

## GENERAL CONDITIONS

available for review and inspection in case of this type of increased cost Claim.

- (b) This data on the bid shall be made available to any Developer attorneys or experts and shall also be utilized as evidence for any legal proceedings.
  - (c) If the bid documentation is not available, lost or destroyed, there shall be a presumption that the lost bid documentation was unfavorable to the Contractor. See California Civil Jury Instruction 204.
- f. Certification: The Contractor (and Subcontractors, if applicable) shall submit with the Claim a certification under penalty of perjury:
- 1. That the Contractor has reviewed the Claim and that such Claim is made in good faith;
  - 2. Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
  - 3. The amount requested accurately reflects the amount of compensation for which the Contractor believes the Developer is liable.
  - 4. That the Contractor is familiar with Government Code sections 12650 et seq. and Penal Code section 72 and that false claims can lead to substantial fines and/or imprisonment.
- g. Signature of Certification: If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
- h. Mandatory Claim Appeal Procedure: The Contractor's Claim Appeal shall be denied if it fails to follow the requirements of this Article.

4.6.9.2 Developer (through CM or Developer's Agent or Attorney) May Request Additional Information: Within thirty (30) days of receipt of the Claim Appeal and the information under this Article, the Developer may request in writing any additional documentation supporting the Claim or documentation relating to defenses to the Claim which the Developer may assert. If additional documents are required, the time in which the Claim is evaluated may be extended by a reasonable time so the Claim and additional documents may be reviewed. *Claims Procedures in Addition to Government Code Claim*. Nothing in the Claims procedures set forth in this Article 4 of the General Conditions shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 et seq.

4.6.9.3 Binding Arbitration of Individual Claim Issues. To expedite resolution of Claims pursuant to Public Contract Code section 9201, at the Developer's sole option, the Developer may submit individual Claims to Arbitration prior to Retention Payment consistent with the requirements of Article 4.6.6.1.

## **GENERAL CONDITIONS**

4.6.9.4 *Resolution of Claims in Court of Competent Jurisdiction.* If Claims are not resolved under the procedure set forth and pursuant to Article 4.6.9, such Claim or controversy shall be submitted to a court in the County of the location of the Project after the Project has been completed, and not before.

4.6.9.5 *Warranties, Guarantees and Obligations.* The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to Developer and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

**GENERAL CONDITIONS****ARTICLE 5  
SUBCONTRACTORS****5.1 DEFINITIONS****5.1.1 Subcontractual Relations Bound to Same Contract Terms at General Contractor**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the same obligations and responsibilities, assumed by Contractor pursuant to the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the Developer and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**5.1.2 Subcontractor Licenses and DIR Registration**

All Subcontractors shall be properly licensed by the California State Licensing Board. All Subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project. No portion of the Work is permitted to be performed by a Subcontractor of any tier unless the subcontractor is properly registered with DIR. Any Subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code section 1771.1.

**5.1.3 Substitution of Subcontractor**

Substitution of Subcontractors shall be permitted only as authorized under Public Contract Code §§ 4107 et seq. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the completion of the Project.

**5.1.4 Contingent Assignment of Subcontracts and Other Contracts**

Each subcontract, purchase order, vendor contract or agreement for any portion of the Work is hereby assigned by the Contractor to the Developer provided that:

- a. Such assignment is effective only after Termination of this Contract with the Contractor by the Developer as provided under Article 14 and only for those subcontracts and other contracts and agreements that the Developer accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and



**GENERAL CONDITIONS**

- b. Such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.
- c. The Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

## **GENERAL CONDITIONS**

### **ARTICLE 6 CONSTRUCTION BY DEVELOPER OR BY SEPARATE CONTRACTORS**

#### **6.1 DEVELOPER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

##### **6.1.1 Separate Contracts.**

6.1.1.1 Developer reserves the right to let other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for (1) introduction and storage of their materials; (2) access to the Work; and (3) execution of their work. Contractor shall properly connect and coordinate its work with that of other Contractors.

6.1.1.2 If any part of Contractor's Work depends on proper execution or results of any other contractor, the Contractor shall inspect and within seven (7) days or less, report to Architect, in writing, any defects in such work that render it unsuitable for proper execution of Contractor's Work. Contractor will be held accountable for damages to Developer for that Work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractors' Work as fit and proper for reception of its Work, except as to defects which may develop in other contractors' work after execution of Contractor's work.

6.1.1.3 To ensure proper execution of its subsequent Work, Contractor shall measure and inspect Work already in place and shall at once report to the Architect in writing any discrepancy between executed Work as built and the Contract Documents.

6.1.1.4 Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Developer in prosecution of the Project and the potential impact of such Work on the Baseline Schedule or Schedule updates.

6.1.1.5 Nothing herein contained shall be interpreted as granting to Contractor the exclusive occupancy at the site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project Site. If execution of any contract by the Developer is likely to cause interference with Contractor's performance of this Contract, once Contractor provides Developer timely written notice and identifies the Schedule Conflict, Developer shall decide which contractor shall cease work temporarily and which contractor shall continue, or whether Work can be coordinated so that contractors may proceed simultaneously.

6.1.1.6 Developer shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts at the Project necessary for the performance of the Project (examples include Electrical Utility Contractor, separate offsite contractor, a separate grading contractor, furniture installation etc.)

**CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES BASED ON DOCUMENTATION PROVIDED WITH THIS BID OR DISCUSSED AT THE JOB WALK. CONTRACTOR HAS MADE ALLOWANCE FOR ANY DELAYS OR DAMAGES WHICH MAY ARISE FROM COORDINATION WITH CONTRACTORS REQUIRED FOR OTHER PHASES. IF ANY DELAYS SHOULD ARISE FROM ANOTHER**

## **GENERAL CONDITIONS**

**CONTRACTOR WORKING ON A DIFFERENT PHASE, CONTRACTOR'S SOLE REMEDY FOR DAMAGES, INCLUDING DELAY DAMAGES, SHALL BE AGAINST THE CONTRACTOR WHO CAUSED SUCH DAMAGE AND NOT THE DEVELOPER. CONTRACTOR SHALL PROVIDE ACCESS TO OTHER CONTRACTORS FOR OTHER PHASES AS NECESSARY TO PREVENT DELAYS AND DAMAGES TO OTHER CONTRACTORS WORKING ON OTHER PHASES OF CONSTRUCTION.**

### 6.1.2 Developer's Right to Carry Out the Work

See Article 2.2.

### 6.1.3 Designation as Contractor

When separate contracts are awarded to contractors on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Developer/Contractor Agreement.

### 6.1.4 Developer Notice to the Contractor of Other Contractors

The Contractor shall have overall responsibility to reasonably coordinate and schedule Contractor's activities with the activities of the Developer's forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Developer in reviewing their construction schedules when:

- a. Notice is provided in the Contract Documents of other scope of Work,
- b. In the case where there is known Work to be performed by other Contractors
- c. For outside contractors hired by utilities
- d. Where the Contract Document provides "Work by Others" or "By Others"
- e. Where specifically noted during the Pre-Bid Conference
- f. Where specifically noted in the Mandatory Job Walk
- g. By CO or ICD,
- h. With respect to the installation of :
  1. Furniture,
  2. Electronics and networking equipment,
  3. Cabling,
  4. Low voltage,
  5. Off-site work,
  6. Grading (when by a separate contractor),

## **GENERAL CONDITIONS**

7. Environmental remediation when excluded by the Contract Documents (i.e. asbestos, lead or other hazardous waste removal)
8. Deep cleaning crews,
9. Commissioning and testing,
10. Keying and re-keying,
11. Programming

6.1.4.2 Exception where no Coordination is Required on the Part of the Contractor for Turn Key Operations. If the Contractor has specifically outlined a “Turn Key” or “Complete Delivery” of a final completed operational school in writing as part of the Baseline Schedule..

6.1.4.3 The Contractor shall make any revisions to the Baseline Schedule (or Schedule Update) and Contract Sum deemed necessary after a joint review and mutual agreement. The Baseline Schedule (or Schedule Update) shall then constitute the Schedules to be used by the Contractor, separate contractors, and the Developer until subsequently revised. Additionally, Contractor shall coordinate with Architect, Developer, and Inspector to ensure timely and proper progress of Work.

### **6.2 CONSTRUCTIVE OWNERSHIP OF PROJECT SITE AND MATERIAL**

Upon commencement of Work, the Contractor becomes the constructive owner of the entire site, improvements, material and equipment on Project site. Contractor must ensure proper safety and storage of all materials and assumes responsibility as if Contractor was the owner of the Project site. All risk of loss or damage shall be borne by Contractor during the Work until the date of Completion. As constructive owner of the Project site, Contractor must carry adequate insurance in case of calamity and is not entitled to rely on the insurance requirements as set forth in this Agreement as being adequate coverage in case of calamity.

### **6.3 DEVELOPER’S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the Developer as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Article 3.12, the Developer may clean up and allocate the cost among those it deems responsible.

**GENERAL CONDITIONS****ARTICLE 7  
CHANGES IN THE WORK****7.1 CHANGES****7.1.1 No Changes Without Authorization**

There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, or order by the Architect for a minor change in the Work as herein provided. Developer shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the Developer's Governing Board or designated representative with delegated authority (subject to Board ratification) has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Document. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the Developer's Governing Board, the Architect, and the Contractor.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to, in writing, in advance by Contractor and Developer and be subject to the monetary limitations set forth in Public Contract Code section 20118.4 (Please check with the Developer since there are different interpretations of the limitations of Public Contract Code section 20118.4 depending on the County the Project is located). In the event that Contractor proceeds with any change in Work without first notifying Developer and obtaining the Architect's and Developer's consent to a Change Order, Contractor waives any Claim of additional compensation for such additional work and Contractor takes the risk that a Notice of Non-Compliance may issue, a critical path Project delay may occur, and the Contractor will also be responsible for the cost of preparation and DSA CCD review fees for a corrective DSA approved Construction Change Document.

**CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT Developer MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DEVELOPER SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.**

**7.1.2 Notices of Non-Compliance**

Contractor deviation or changes from approved Plans and Specifications may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Plans and Specifications, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 7.3.1 for Definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved Plans and Specifications may



## **GENERAL CONDITIONS**

prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved Plans and Specifications shall be the Contractor's responsibility.

### 7.1.3 Architect Authority

The Architect will have authority to order minor changes in the Work that do not involve DSA Approval not involving any adjustment in the Contract Sum, or an extension of the Contract Time.

## 7.2 **CHANGE ORDERS ("CO")**

A CO is a written instrument prepared by the Architect and signed by the Developer (as authorized by the Developer's Governing Board), the Contractor, and the Architect stating their agreement upon all of the following:

- a. A description of a change in the Work;
- b. The amount of the adjustment in the Contract Sum, if any; and
- c. The extent of the adjustment in the Contract Time, if any.

A CO may be comprised of ICD's, Response to RFP's and COR's

## 7.3 **CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)**

### 7.3.1 Definitions

7.3.1.1 *Construction Change Document (CCD)*. A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved Plans and Specifications. There are two types of Construction Change Documents. (1) DSA approved CCD Category A (DSA Form 140) for Work affecting structural, access compliance or fire/ life safety of the Project which will require a DSA approval; and, (2) CCD Category B (DSA Form 141) for work NOT affecting structural safety, access compliance or fire/ life safety that will not require a DSA approval (except to confirm that no approval is required);

7.3.1.2 *Immediate Change Directive (ICD)*. An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the Developer (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Developer may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

In the case of an Immediate Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 14.

## **GENERAL CONDITIONS**

An ICD does not automatically trigger an Article 7.6 Dispute or Claim. Contractor must timely follow the procedures outlined at Article 7.6 and 4.6 where applicable.

Refer to Division 1 and Supplementary General Conditions for a copy of the proposed Immediate Change Directive form.

### **7.3.2 Use to Direct Change**

An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of a CO, COR, or RFP. A copy of an ICD form is provided in the Supplementary General Conditions and Division 1. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and no additional time. Contractor may prepare a COR associated with the ICD pursuant to Article 7. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 14 or take over the Work under Article 2.2.

If adequate time exists, an ICD may be subject of an RFP for pricing and determination if any time that may be required. However, if an RFP is not completed, Contractor shall immediately commence Work when an ICD is issued. If the RFP is incomplete, it may still be completed to be submitted for pricing purposes as long as the RFP is submitted within the timeline provided by the RFP, or within 10 days following issuance of the ICD.

### **7.3.3 ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off**

In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an acknowledgement by the Developer that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

**7.3.3.1 *Contractor Compliance with all Aspects of an ICD.*** Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 2.2 or Termination of the Contractor pursuant to Article 14.

**7.3.3.2 *Exception in the Case of DSA Issued Stop Work Order.*** Contractor must proceed with an ICD even if a CCD has not been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the Developer.

**7.3.3.3 *ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance.*** If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 4.5

## **GENERAL CONDITIONS**

### **7.4 REQUEST FOR INFORMATION (“RFI”)**

#### **7.4.1 Definition**

A RFI is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions.

7.4.1.1 A RFI shall not be used as a vehicle to generate time extensions.

7.4.1.2 Resubmission of the same or similar RFI is not acceptable. RFI’s that are similar should be addressed in Project meetings where the requestor (Contractor, Subcontractor or vendor) is able to address the particular issue with the Architect or Engineer and a resolution addressed in the minutes.

7.4.1.3 A RFI response applicable to a specific area cannot be extended to other situations unless specifically addressed in writing within the RFI or in a separate RFI.

7.4.1.4 RFI’s should provide a proposed solution and should adequately describe the problem that has arisen.

#### **7.4.2 Scope**

The RFI shall reference all the applicable Contract Documents including Specification section, detail, page numbers, Drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

#### **7.4.3 Response Time**

The Architect must respond to a RFI within a reasonable time after receiving such request. If the Architect’s response results in a change in the Work, then such change shall be effected by a written CO, COR RFP or ICD, if appropriate. If the Architect cannot respond to the RFI within a reasonable time, the Architect shall notify the Contractor, with a copy to the Inspector and the Developer, of the amount of time that will be required to respond.

#### **7.4.4 Costs Incurred**

The Contractor shall be responsible for any costs incurred for professional services as more fully set forth in Article 4.5, which shall be subject to a Deductive Change Order, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. Developer, at its sole discretion, shall issue a Deductive Change Order to Contractor for all such professional services arising from this Article.

## **GENERAL CONDITIONS**

### **7.5 REQUEST FOR PROPOSAL (“RFP”)**

#### **7.5.1 Definition**

A RFP is a written request prepared by the Architect (and/or CM) requesting the Contractor to submit to the Developer and the Architect an estimate of the effect of a proposed change on the Contract Price and (if applicable) the Contract Time. If Architect issues a Bulletin, the Changed items in the Bulletin shall be addressed as an RFP and all responses shall be prepared to a Bulletin as addressed in this Article 7.5. A form RFP is included in the Division 1 documents.

#### **7.5.2 Scope**

A RFP shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required by Article 7.7. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

#### **7.5.3 Response Time**

Contractor shall respond to an RFP within ten (10) days or the time period otherwise set forth in the RFP.

### **7.6 CHANGE ORDER REQUEST (“COR”)**

#### **7.6.1 Definition**

A COR is a written request prepared by the Contractor supported by backup documentation requesting that the Developer and the Architect issue a CO based upon a proposed change, cost, time, or cost and time that may be incurred on the Project or arising from an RFP, ICD, or CCD.

#### **7.6.2 Changes in Price**

A COR shall include breakdowns per Article 7.7 to validate any change in Contract Price due to proposed change or Claim.

#### **7.6.3 Changes in Time**

A COR shall also include any additional time required to complete the Project only if the delay is a critical path delay. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Article 8. A schedule fragnet showing the time delay must be submitted with the COR. Any changes in time will be granted only if there is an impact to the critical path. If Contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

### **7.7 COST OF CHANGE ORDERS**

#### **7.7.1 Scope**

Within ten (10) days after a request is made for a change that impacts the Contract Sum as defined in Article 9.1, the critical path, or the Contract Time as defined in Article 8.1.1, the Contractor

## GENERAL CONDITIONS

shall provide the Developer and the Architect, with a written estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, and wage rates required for the change, and the effect upon the Contract Time of such CO. Changes may be made by Developer by an appropriate written CO, or, at the Developer's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written Construction Change Document.

Developer may, as provided by law and without affecting the validity of this Agreement, order changes, modification, deletions and extra work by issuance of written CO or CCD from time to time during the progress of the Project, Contract Sum being adjusted accordingly. All such Work shall be executed under conditions of the original Agreement except that any extension of time caused thereby shall be adjusted at time of ordering such change. Developer has discretion to order changes on a "time and material" basis with adjustments to time made after Contractor has justified through documentation the impact on the critical path of the Project.

7.7.1.1 *Time and Material Charges.* If the Developer orders Work on a "time and material" basis, timesheets shall be signed daily by the Inspector or Developer Representative at or near the time the Work is actually undertaken and shall show the hours worked, and the Work actually completed. No time sheets shall be signed the next day. A copy shall be provided to the Person signing the document at the time the document is signed, but not before 10 am the following day.

### 7.7.2 Determination of Cost

The amount of the increase or decrease in the Contract Price from a CO or COR, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. If an agreement cannot be reached within fifteen (15) days after submission and negotiation of Contractor's proposal, Contractor may submit pursuant to Article 7.7.3. Submission of sums which have no basis in fact are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq.);
  1. If the Developer objects to 7.7.2(a) as a method for submission due to inaccuracies in the submitted amount, overstatement of manpower or time required to perform the CO, or unreliability of the data provided, the Developer may either have the Architect or a professional estimator determine the cost for the CO, and the applicable time extension, or the Contractor shall utilize Article 7.7.2(d) or 7.7.3.
  2. Once the Developer provides a written objection to use of Article 7.7.2(a) due to unreliability of the estimated price, the Contractor shall no longer utilize mutual acceptance of a lump sum as a method for submission of CO's and shall provide a breakdown of estimated or actual costs pursuant to Article 7.7.2(d) or 7.7.3.
- b. By unit prices contained in Contractor's original bid and incorporated in the Project documents or fixed by subsequent agreement between Developer and Contractor;

**GENERAL CONDITIONS**

- c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. However, in the case of disagreement, Contractor must utilize the procedure under Article 7.7.3; or
- d. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. *Basis for Establishing Costs*

- (1) Labor will be the cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and workers compensation insurance (exclude insurance costs as part of the overhead and profit mark-up), health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. In no case shall the total labor costs exceed the applicable prevailing wage rate for that particular classification. The use of a labor classification which would increase the extra Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
- (2) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery. The Developer reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Developer.
- (3) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$250 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the Work is performed. Rates applied shall be appropriate based on actual equipment need and usage. Monthly, weekly or other extended use rates that results in the lowest cost shall be applied if equipment is used on site for extended periods.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.



**GENERAL CONDITIONS**

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Developer than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the Developer.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer’s ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

If tool and equipment charges are part of a Dispute, Claim, or Appeal, the Developer reserves the right to utilize actual costs for tools and equipment or a depreciation rate for equipment based on audit finding under Article 13.11 and deduct any rental charges that exceed actual or depreciated costs.

- e. Other Items. The Developer may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.
- f. Invoices. Vendors’ invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the Developer may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.
- g. Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: field overhead, home office overhead, off-site supervision, CO preparation/negotiation/research, time delays, Project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, liability and property damage insurance, and additional safety equipment costs.

7.7.3 Format for COR or CO’s

The following format shall be used as applicable by the Developer and the Contractor to communicate proposed additions to the Contract. All costs submitted shall be actual costs and labor shall be unburdened labor. Refer to Division 1 for a copy of the Construction Change Order form.

		<u>EXTRA</u>	<u>CREDIT</u>
(a)	Material (attach itemized quantity and unit cost plus sales tax)	_____	_____

**GENERAL CONDITIONS**

		<u>EXTRA</u>	<u>CREDIT</u>
(b)	Labor Not to Exceed Applicable Prevailing Wage Rates (attach itemized hours and rates)	_____	_____
(c)	Equipment (attach invoices)	_____	_____
(d)	Subtotal	_____	_____
(e)	If Subcontractor performed work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed 10% of item (d).	_____	_____
(f)	Subtotal	_____	_____
(g)	Contractor's Overhead and Profit: Not to exceed 10% of Item (d) if Contractor performed the work. No more than 5% of Item (d) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed 10% of Item (d), and portions performed by Subcontractor shall not exceed 10% of Item (d).	_____	_____
(h)	Subtotal	_____	_____
(i)	Bond not to exceed one percent (1%) of Item (h)	_____	_____
(k)	TOTAL	_____	_____
(l)	Time/ Days	_____	_____

The undersigned Contractor approves the foregoing Change Order or Immediate Change Directive as to the changes, if any, and the Contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire Work on account of said Change Order or Immediate Change Directive, and agrees to furnish all labor, materials and service and perform all Work necessary to complete any additional Work specified therein, for the consideration stated herein. It is understood that said Change Order or Immediate Change Directive shall be effective when approved by the Governing Board of the Developer.

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

## **GENERAL CONDITIONS**

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

7.7.3.1 *Adjustment for Time and Compensable Delay.* A CO shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Article 8 of the General Contract. A schedule fragnet showing the time delay must be submitted with the CO. Any changes in time will be granted only if there is an impact to the critical path. If Contractor fails to request a time extension in a CO, then the Contractor is thereafter precluded from requesting or claiming a delay.

### 7.7.4 Deductive Change Orders

All Deductive Change Order(s) must be prepared utilizing the form under Article 7.7.3 (a) – (d) only, setting forth the actual costs incurred. Except in the case of an Article 2.2 or 9.6 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of 5% total profit and overhead.

For unilateral Deductive Change Orders, or where credits are due from Contractor for Allowances, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Inspector costs for after hours or corrective services, Work removed from the Agreement under Article 2.2 or Article 9.6, there shall be no mark-up.

Developer may, any time after a Deductive Change Order is presented to Contractor by Developer for items under Article 2.2 or Article 9.6 or if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a Progress Payment, Final Payment, or Retention.

### 7.7.5 Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein. All CO's are subject to Audit under Article 13.11 for discounts, rebates and refunds.

### 7.7.6 Accounting Records

With respect to portions of the Work performed by CO's and CCD's on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records in a format consistent with accepted accounting standards and satisfactory to the Developer, which shall be available to the Developer on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

Any time and material charges shall require Inspector's signature on time and material cards showing the hours worked and the Work actually completed. See Article 7.7.1.1.

## **GENERAL CONDITIONS**

### **7.7.7 Notice Required**

If the Contractor desires to initiate a Dispute for an increase in the Contract Price, or any extension in the Contract Time for completion, Contractor shall notify the applicable party responsible for addressing the Dispute or Claim pursuant to Article 4.6. No Claim or Dispute shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such Claim shall be authorized by a CO.

### **7.7.8 Applicability to Subcontractors**

Any requirements under this Article 7 shall be equally applicable to CO's, COR's or ICD's issued to Subcontractors by the Contractor to the same extent required by the Contractor.

### **7.7.9 Alteration to Change Order Language**

Contractor shall not alter or reserve time in COR's, CO's or ICD's. Contractor shall execute finalized CO's and proceed under Article 7.7.7 and Article 4.6 with proper notice. If Contractor intends to reserve time without an approved CPM schedule prepared pursuant to Article 8 or without submitting a fragnet showing delay to critical path, then Contractor may be prosecuted pursuant to the False Claim Act.

**GENERAL CONDITIONS****ARTICLE 8  
TIME AND SCHEDULE****8.1 DEFINITIONS****8.1.1 Contract Time**

Contractor shall perform and reach Substantial Completion (See Article 1.1.49) within the time specified in the Agreement Form. Moreover, Contractor shall perform its Work in strict accordance with the Project Milestones in the Contract Documents and shall proceed on a properly developed and approved Baseline Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished. Note that Contract Time includes and incorporates all Float and other Baseline inclusions as noted in Article 8.3.2.1 and as otherwise specifically noted in Article 8.

**8.2**

Developer may give a Notice to Proceed within ninety (90) days of the award of the bid by Developer. Once Contractor has received the notice to proceed, Contractor shall complete the Work in the period of time referenced in the Contract Documents.

In the event that Developer desires to postpone the giving of the Notice to Proceed beyond this three-month period, it is expressly understood that with reasonable notice to the Contractor, the giving of the date to proceed may be postponed by Developer. It is further expressly understood by Contractor, that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the giving of the notice to proceed

If the Contractor believes that a postponement will cause a hardship to Contractor, Contractor may terminate the Contract with written notice to Developer within 10 days after receipt by Contractor of Developer's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the Developer, the Developer shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement and the grounds for notification and hardship shall be subject to Audit pursuant to Article 13.11. Should Contractor terminate the Contract as a result of a notice of postponement, Developer may award the Contract to the next lowest responsible bidder.

**8.2.1 Computation of Time**

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**8.2.2 Float**

Float is time the total number of days an activity may be extended or delayed without delaying the Completion Date shown in the schedule. Float will fall into three categories: (1) Rain Days; (2) Governmental Delays; and, (3) Project Float. Project Float and Rain Days are owned by the Project and may be utilized as necessary for critical path delays once the days become available for consumption (i.e. the Rain Day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than

## **GENERAL CONDITIONS**

to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.

8.2.2.1 *Governmental Delay Float.* It is anticipated that there will be governmental generated delays. Specific to DSA approvals, it is anticipated that no less than twelve (12) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, a two (2) year Contract Time shall require twenty-four (24) days of Governmental Float. If the Contract Time is 182 days, then the Contract Time shall require six (6) days of Governmental Float) This Governmental Delay float must be incorporated into the schedule and should be incorporated in each critical activity as Contractor deems fit. Specifically, major categories of Work under the DSA 152 (Project Inspection Card) should be allocated Governmental Delay Float at the Contractor's discretion. Governmental Delay Float on the Project may exceed 12 days per one (1) year period, but Contractor is required to include not be less than 12 days of Governmental Delay Float during each one (1) year period.

Contractor's failure to establish a protocol for requesting inspections is not grounds to utilize Governmental Delay Float. As noted in Article 3.1.4, 48 hours advance notice of commencing Work on a new area is required after submitting form DSA 156 and under PR 13-01 Special Inspection reports are not required to be posted until at least 14 days after the Work was inspected. Failure to plan, and pay (if applicable) for quicker delivery of Special Inspections is not Governmental Delay Float under Article 8.1.4.1. If Governmental Delay Float is not utilized, this float is carried through to other DSA 152 categories of inspection and consumed over the course of the Project

Governmental Delay Float may be utilized for a DSA Stop Work Order regardless of fault as defined under Education Code section 17307.5(b).

8.2.2.2 *Inclement Weather (Rain Days).* The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days for each calendar year for Southern California will be allotted for in the Contractor's schedule for each winter weather period or carried at the end of the schedule as Rain Float. Float for weather days in other geographical regions shall be adjusted based on NOAA weather data for the geographical location. Contractor has anticipated all the days it takes to dry out and re-prepare areas that may be affected by weather delays which extend beyond the actual weather days. The weather days shall be shown on the schedule and if not used will become float for the Project's use. The Contractor will not be allowed a day-for-day weather delay for periods noted as float in the Schedule. The Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather. Additional days beyond the NOAA shall be considered under the same criteria that weather days are granted below.

A Rain Day shall be granted by Architect or CM if the weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available float for the calendar year.

8.2.2.3 *Project Float.* The Contractor may determine some activities require a lesser duration than allocated and may set aside float in the Project Schedule. There shall be no early



## **GENERAL CONDITIONS**

completion. Instead, to the extent float is either addressed at the end of the Project or throughout each category of critical path work, Project float may be used as necessary during the course of the Project and allocated on a first, come first serve basis. However, the use of float does not extend to Governmental Delay Float, which shall only be used for Governmental Delays.

### **8.3 HOURS OF WORK**

#### **8.3.1 Sufficient Forces**

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

#### **8.3.2 Performance During Working Hours**

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

#### **8.3.3 Costs for After Hours Inspections**

If the Work done after hours is required by the Contract Documents, a Recovery Schedule, or as a result of the Contractor's failure to plan, and inspection must be conducted outside the Inspector's regular working hours, the costs of any after hour inspections, shall be borne by the Contractor.

If the Developer allows the Contractor to do Work outside regular working hours for the Contractor's convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Developer and a Deductive Change Order shall be issued from the next Progress Payment.

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the Developer and a Deductive Change Order from the next Progress Payment as a Deductive Change Order.

### **8.4 PROGRESS AND COMPLETION**

#### **8.4.1 Time of the Essence**

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

#### **8.4.2 Baseline Schedule Requirements**

8.4.2.1 *Timing:* Within ten (10) calendar days after Notice to Proceed, Contractor shall submit a practical schedule showing the order in which the Contractor proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the salient categories of the Work. This first schedule which outlines the Contractor's view of the practical way in which the Work will be accomplished is the Baseline Schedule. If the Contractor Fails to submit the Baseline

## **GENERAL CONDITIONS**

Schedule within the ten (10) days noted, then Developer may withhold processing and approval of progress payments pursuant to Article 9.4 and 9.6.

8.4.2.2 *Developer Review and Approval:* Developer, Architect and CM will review both a paper and electronic copy of Baseline Schedule and may provide comments as noted in this Article and either approve or disapprove the Baseline Schedule. All Schedules shall be prepared using an electronic scheduling program acceptable to Developer. All Schedules shall be delivered in an electronic format usable by the Developer. All logic ties and electronic information shall be included in the electronic copy of the Baseline Schedule that is delivered to the Developer.

8.4.2.3 *Schedule Must Be Within the Given Contract Time.* The Baseline Schedule shall not exceed time limits set forth in the Contract Documents and shall comply with all of the scheduling requirements as set forth in the Specifications and Contract Documents.

8.4.2.4 *Submittals Must Be Incorporated (See Articles 3.7 and 3.9):* Contractor shall include Submittals as line items in the Baseline Schedule as required under Article 3.7.2 and 3.9.6. Submittals shall not delay the Work, Milestones, or the Completion Date. Failure to include Submittals in the Baseline Schedule shall be deemed a material breach by the Contractor.

8.4.2.5 *Float Must Be Incorporated.* The Baseline Schedule must indicate the beginning and completion of all phases of construction and shall use the “critical path method” (commonly called CPM) for the value reporting, planning and scheduling, of all Work required under the Contract Documents. The Baseline Schedule must incorporate all Milestones in the Project and apply Governmental Float at each Milestone in the Contractor’s discretion. The Baseline Schedule shall incorporate any Schedule provided by the Developer as part of the bid and shall note durations that will not be adequate or should be shortened based on Contractor’s review. These changes shall be identified and incorporated into Contractor’s Baseline Schedule as long as requested changes are made within 10 days after the Developer chooses to move forward with the Project. Scheduling is necessary for the Developer’s adequate monitoring of the progress of the Work and shall be prepared in accordance with the time frame described in this Article 8. The Architect may disapprove of any Schedule or require modification to it if, in the opinion of the Architect or Developer, adherence to the any Schedule prepared by the Contractor will not cause the Work to be completed in accordance with the Agreement.

8.4.2.6 *No Early Completion.* Contractor shall not submit any Schedule showing early completion without indicating float time through the date set for Project completion by Developer. Contractor’s Baseline Schedule shall account for all days past early completion as float which belongs to the Project. Usage of float shall not entitle Contractor to any delay Claim or damages due to delay.

8.4.2.7 *Use of Schedule Provided in Bid Documents.* In some cases, the bid will include a preliminary schedule indicating Milestones and construction sequences for the Project along with general timing for the Project. The preliminary schedule is not intended to serve as the Baseline Schedule utilized for construction. It is up to the Contractor to study and develop a Baseline Schedule to address the actual durations and sequences of Work that is anticipated while maintaining the Milestones provided by the Developer. Contract shall obtain information from Contractor’s Subcontractors and vendors on the planning, progress, delivery of equipment, coordination, and timing of availability of Subcontractors so a practical plan of Work is fully developed and represented in the Baseline Schedule.

8.4.2.8 *Incorrect Logic, Durations, Sequences, or Critical Path.* The Developer may reject or indicate durations, sequences, critical path or logic are not acceptable and request changes. The electronic copy of the Baseline Schedule shall have adequate information so logic ties, duration,

## **GENERAL CONDITIONS**

sequences and critical path may be reviewed electronically. Contractor is to diligently rebuild and resubmit the Baseline Schedule to represent the Contractor's plan to complete the Work and maintain Milestones at the next progress meeting, or before the next progress meeting. If Contractor is not able to build a Baseline Schedule that is acceptable to the Developer or Architect, the Developer reserves the right to utilize the unapproved originally submitted Baseline Schedule (See Article 8.3.2.12) and the comments submitted to hold Contractor accountable for timely delivery of Work and maintenance of Milestones. Furthermore, Contractor's representations in the Baseline Schedule, if unacceptable, may also be used as a basis for termination of the Contract under Article 14 if Contractor fails to adequately maintain the Schedule and falls significantly behind without undertaking the efforts to either submit and follow a Recovery Schedule or fail to submit a Recovery Schedule and make no effort toward recovery on the Project.

8.4.2.9 *Contractor Responsibility Even if Schedule Issues Are Not Discovered.* Failure on the Part of the Developer to discover errors or omissions in any Schedules submitted shall not be construed to be an approval of the error or omission and any flawed Schedule is not grounds for a time extension.

8.3.2.9.1 Inclusions in Baseline Schedule. In addition to scheduling requirements set forth at Article 8.3.2, Contractor is specifically directed to include (broken out separately) in Contractor's Baseline Schedule and all Schedule updates, the following items required pursuant to these General Conditions, including but not limited to:

1. Rain Day Float (excluding inclement weather) as required under Article 8.1.4.2. For example, if the NOAA provides 22 days of Rain Days, all 22 days must be incorporated and noted in the Baseline Schedule. Further, any days required to clean-up or dry out shall be included for operations that are likely to require a clean-up or dry out period. Days that are not utilized shall be considered float owned by the Project.
2. Governmental Delay Float under Article 8.1.4.1. This Governmental Delay Float shall only be utilized for Governmental Delays and shall not be considered available float owned by the Project. This float shall only be distributed to the Project upon the completion of the Project and shall be used to offset Liquidated Damages and shall not generate compensable delays.
3. Submittal and Shop Drawing schedule under Article 3.9.
4. Deferred Approvals under Article 3.9.
5. Time for separate contractors, including furniture installation and start up activities, under Article 6.1.
6. Coordination and timing of any Drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project. Article 2.1.4.
7. Testing, special events, or school activities

## **GENERAL CONDITIONS**

8.4.2.10 *Failure to include Mandatory Schedule Items.* Developer may withhold payment pursuant to Articles 9.3, 9.4 and 9.6. In lieu of withholding payment for failure to include Mandatory Schedule Items, after the Developer or Architect has notified the Contractor of failure to meet the Baseline Schedule or Updated Schedule requirements and provided a written notification of this failure and provided a written notice of Schedule preparation errors, and the Contractor fails to correct the noted deficiencies or the Contractor does not provide an updated Baseline Schedule correcting the deficiencies, then Contractor shall not be granted an extension of time for failure to obtain necessary items and approvals under Article 8.3.2 and for the time required for failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall maintain all required Article 8.3.2 Schedule items in the Baseline Schedule and indicate any days that have been used as allowed in Article 8. If Contractor fails to include all Article 8.3.2 items in its Baseline Schedule or Schedule Updates and the Developer either utilizes an Unapproved Schedule under Article 8.3.2.12 or does not object to the inclusion of required scheduling items, then all mandatory Schedule inclusions, including float, shall be utilized in the Developer's discretion. If the Contract Time is exceeded, then Contractor shall be subject to the assessment of Liquidated Damages pursuant to Article 8.4.

8.4.2.11 *Failure to Meet Requirements.* Failure of the Contractor to provide proper Schedules as required by this Article and Article 9 is a material breach of the Contract and grounds for Termination pursuant to Article 14. The Developer, at its sole discretion, may choose, instead, to withhold, in whole or in part, any Progress Payments or Retention amounts otherwise payable to the Contractor.

8.4.2.12 *Use of an Unapproved Baseline Schedule.* If the Baseline Schedule submitted by the Contractor is unacceptable to the Developer (i.e. failing to meet the requirements of Article 8.3.2) and Contractor does not incorporate or address the written comments to the Baseline Schedule and a Baseline Schedule is not approved, but due to extreme necessity, the Developer moves forward without an approved Baseline Schedule, Contractor shall diligently revise and meet Schedule update requirements of Article 8 and incorporate all Article 8.3.2 comments in all updates). However, for purposes of Termination pursuant to Article 14, the unapproved Baseline Schedule initially submitted shall be treated as the Baseline Schedule with durations shortened or revised to accommodate all float, all mandatory Schedule requirements under Article 8.3.2, any requirements in the Contract Documents, and all revisions by the Developer or Architect.

### 8.4.3 Update Schedules

8.4.3.1 *Updates Shall Be Based on Approved Baseline Schedule.* Except in the case where there has not been agreement as to a Baseline Schedule, the approved Baseline Schedule shall be used to build future Schedule updates. Schedule updates shall be a CPM based Schedule consistent with the Baseline Schedule requirements of 8.3.2.

In the case that no Baseline has been approved, Schedule updates shall be provided monthly and each update shall incorporate all comments and revisions noted as not complying with the requirements of Article 8.3.2. Contractor shall be held to the Article 8.3.2.12 unapproved Baseline Schedule, inclusive of all Milestones, float, comments and revisions by the Developer and Architect, all required Baseline Schedule Inclusions under Article 8.3.2, and any requirements in the Contract Documents.

8.4.3.2 *Schedule Updates.* Contractor shall update the approved Schedule each month to address actual start dates and durations, the percent complete on activities, actual completion

## **GENERAL CONDITIONS**

dates, estimated remaining duration for the Work in progress, estimated start dates for Work scheduled to start at future times and changes in duration of Work items.

8.4.3.3 *Listing of Items Causing Delays.* Schedule updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating "Developer Delay" or "Architect Delay" shall be an inadequate listing. Delays shall only be listed if they meet the requirements of Article 8.4.

8.4.3.4 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, if requested by the Architect or Developer, shall take the steps necessary to improve Contractor's progress and demonstrate to the Developer and Architect that the Contractor has seriously considered how the lost time, the Completion Date, or the Milestones that are required to be met within the terms of the Contract. Contractor shall immediately provide a Recovery Schedule showing how Milestones and the Completion Date will be met. In no case, shall a Recovery Schedule be provided later than ten (10) days following the request for a Recovery Schedule from the Architect or Developer.

- a. Failure to Provide a Recovery Schedule. Shall subject Contractor to the assessment of Liquidated Damages for failure to meet the Contract Time. Refusal or failure to provide a Recovery Schedule shall be considered a substantial failure of performance and a material breach of Contract and may result in Termination of the Contract pursuant to Article 14.
- b. Recovery Schedule Acceleration without Additional Cost. The Developer may require Contractor prepare a Recovery Schedule showing how the Project shall be accelerated, without any additional cost to the Developer. The Developer may order, without additional cost, the following:
  1. Increase the number of shifts;
  2. Utilize overtime to recover the approved Schedule; and/or
  3. Increase the days when Work occurs, including weekends, at the Project and at any manufacturer's plant.
- c. Recovery Schedule Acceleration without Additional Cost. If Contractor disputes that the Recovery Schedule acceleration shall be issued without additional costs, the Contractor shall submit concurrent with Recovery Schedule acceleration notice pursuant to Articles 8.4.3 and 8.4.4.

## **8.5 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

### **8.5.1 Liquidated Damages**

CONTRACTOR AND DEVELOPER HEREBY AGREE THAT THE EXACT AMOUNT OF DAMAGES FOR FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED IS EXTREMELY DIFFICULT OR IMPOSSIBLE TO DETERMINE. IF THE WORK IS NOT SUBSTANTIALLY COMPLETED IN THE TIME SET FORTH IN THE AGREEMENT, IT IS UNDERSTOOD THAT THE DEVELOPER WILL SUFFER DAMAGES. IT BEING IMPRACTICAL

## **GENERAL CONDITIONS**

AND UNFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THE CONTRACTOR SHALL PAY TO THE DEVELOPER THE AMOUNT LIQUIDATED DAMAGES SET FORTH IN THE AGREEMENT, FOR EACH CALENDAR DAY OF DELAY IN REACHING SUBSTANTIAL COMPLETION (SEE ART 1.1.46). CONTRACTOR AND ITS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF PURSUANT TO GOVERNMENT CODE SECTION 53069.85.

### 8.5.2 Delay

Except and only to the extent provided under Article 7 and Article 8, by signing the Agreement, Contractor agrees to bear the risk of delays to Completion of the Work and that Contractor's bid for the Project was made with full knowledge of this risk.

In agreeing to bear the risk of delays to complete the Work, Contractor understands that, except and only to the extent provided otherwise in Article 7 and 8, the occurrence of events that delay the Work shall not excuse Contractor from its obligation to achieve Completion of the Project within the Contract Time, and shall not entitle the Contractor to an adjustment to the Contract time.

### 8.5.3 Excusable Delay

Contractor shall not be charged for Liquidated Damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its Subcontractors, arising from Rain Float or Project Float, including acts of God, as defined in Public Contract Code section 7105, acts of enemy, epidemics and quarantine restrictions. Contractor shall within five (5) calendar days of beginning of any such delay notify Developer in writing of causes of delay; thereupon Developer shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted after proper compliance with Article 8.3 requiring preparation and submission of a properly prepared CPM schedule.

8.5.3.1 *Excusable Delay Is Not Compensable.* No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project schedule.

8.5.3.2 *Notification.* The Contractor shall notify the Architect in writing of any anticipated delay and its cause, in order that the Architect may take immediate steps to prevent, if possible, the occurrence or continuance of delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

8.5.3.3 *Extension Request.* In the event the Contractor requests an extension of Contract time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work (See Article 7). When requesting time, i.e., extensions, for proposed Change Orders, they must be submitted with the proposed Change Order with full justification and documentation. If the Contractor fails to submit justification with the proposed Change Order it waives its right to a time extension at a later date. Such justification must be based on the official Contract schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the scope of Work. Blanket or general claims for extra days without specific



## **GENERAL CONDITIONS**

detailed information as required herein or a blanket or general reservation of rights do not fulfill the requirements of this Article and shall be denied. The justification must include, but is not limited to, the following information:

- a. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.
- b. Logical ties to the official Baseline Schedule or Approved Updated Schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay. (A fragment of any delay of over ten (10) days must be provided.)

The Contractor and Developer understand and expressly agree that insofar as Public Contract Code section 7102 may apply to changes in the Work or delays under this Contract, the actual delays and damages, if any, and time extensions are intended to, and shall provide, the exclusive and full method of compensation for changes in the Work and construction delays.

### 8.5.4 Notice by Contractor Required

The Contractor shall within five (5) calendar days of beginning of any such delay notify the Developer in writing of causes of delay with justification and supporting documentation. In the case of a Recovery Schedule pursuant to Article 8.3.3.4, Contractor shall submit written notice concurrent with the Recovery Schedule. Developer will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected.

Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

8.5.4.1 *Adjustment for Compensable Delays.* The Schedule may be adjusted for a delay if, and only if, Contractor undertakes the following:

- a. Contractor submits a timely COR or CO pursuant to the requirements of Article 7.
- b. Contractor submits a fragnet showing the critical path delay caused by the COR, CO, Changed Condition, CCD, or ICD
- c. Contractor has addressed all required float days in the Fragnet.
- d. Contractor submits a complete breakdown of all costs incurred utilizing the format of Article 7.3.3

### 8.5.5 No Additional Compensation for Coordinating Governmental Submittals and the Resulting Work

CONTRACTOR HAS PLANNED ITS WORK AHEAD OF TIME AND IS AWARE THAT GOVERNMENTAL AGENCIES, SUCH AS THE GAS COMPANIES, ELECTRICAL UTILITY

## **GENERAL CONDITIONS**

COMPANIES, WATER DEVELOPERS AND OTHER AGENCIES MAY HAVE TO APPROVE CONTRACTOR PREPARED DRAWINGS OR APPROVE A PROPOSED INSTALLATION. CONTRACTOR HAS INCLUDED DELAYS AND DAMAGES WHICH MAY BE CAUSED BY SUCH AGENCIES IN CONTRACTOR'S BID AND HAS INCLUDED ADEQUATE TIME IN THE CONTRACTOR'S BASELINE SCHEDULE. FAILURE TO ADEQUATELY PLAN AND SCHEDULE IS NOT A BASIS TO USE GOVERNMENTAL DELAY FLOAT.

### 8.5.6 Developer Right to Accelerate the Work

The Developer may direct the Contractor to meet schedule requirements when the Work has been delayed. The Developer shall compensate the Contractor for the additional costs incurred by acceleration to the extent that such costs are directly attributable to the acceleration and are incurred through no fault or negligence of the Contractor.

8.5.6.1 *Management of Acceleration.* Contractor acceleration shall not include Work that is part of the scope of Work detailed in the Plans and Specifications. Instead, the acceleration costs shall be premium or overtime and quantifiable additional work added to the Project meant to accelerate the Project. Contractor is directed to keep consistent crews on the Project so time can be tracked. If crews are circulated off the Project or crews brought in only for overtime, the Developer may be charged for Contract Work and not accelerated time. In such case, the Developer may object to the costs submitted.

8.5.6.2 *Costs for Acceleration.* Cost for Acceleration shall be supported by backup documentation, and time sheets signed by the Inspector for each day work has been performed, at or near the time when the Work was performed. A listing on the time sheet shall document all labor, materials and services utilized that day and provide areas of work, and amount of work performed. Contractor shall comply with submission requirements of Article 7.7.

**GENERAL CONDITIONS****ARTICLE 9  
PAYMENTS AND COMPLETION****9.1 CONTRACT SUM**

The Contract Sum or Contract Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Developer to the Contractor for performance of the Work under the Contract Documents.

**9.2 COST BREAKDOWN****9.2.1 Required Information**

Contractor shall furnish the following:

- a. Within ten (10) days after Notice to Proceed, a detailed breakdown of the Contract Price (hereinafter "Schedule of Values") for each Project, Site, building, Milestone or other meaningful method to measure the level of Project Completion as determined by the Developer shall be submitted as a Submittal for the Project.;
- b. Within ten (10) days after the date of the Notice to Proceed, a schedule of estimated monthly payment requests due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Developer may require;
- c. Within ten (10) days after the date of the Notice to Proceed, address, telephone number, telecopier number, California State Contractors License number, classification and monetary value of all subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

**9.2.2 Information and Preparation of Schedule of Values**

9.2.2.1 *Break Down of Schedule of Values.* Schedule of Values shall be broken down by Project, site, building, Milestone, or other meaningful method to measure the level of Project Completion as determined by the Developer.

9.2.2.2 *Based on Contractor Bid Costs.* The Schedule of Values shall be based on the costs from Contractor's bid to the Developer. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.

9.2.2.3 Largest Dollar Value for Each Line Item. Identify Subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half of one percent (0.5%) of their Contract Price, whichever is less.

9.2.2.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.

## **GENERAL CONDITIONS**

9.2.2.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the Developer.

### 9.2.3 Developer Approval Required

The Developer shall review all submissions received pursuant to Article 9.2 in a timely manner. All submissions must be approved by the Developer before becoming the basis of any payment.

## **9.3 PROGRESS PAYMENTS**

### 9.3.1 Payments to Contractor

Unless there is a resolution indicating that the Work for the Project is substantially complex, within thirty-five (35) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as certified by Architect and Inspector and verified by Contractor) up to the last day of the previous month, less the aggregate of previous payments. In the case of a Project designated substantially complex, the sum paid to the Contractor shall be equal to ninety percent (90%) of the value of the Work performed (as certified by the Architect and Inspector and verified by Contractor). The value of the Work completed shall be the Contractor's best estimate. Work completed as estimated shall be an approximation or estimate only and no mistake, inaccuracy, error or falsification in said any approved estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the Developer's enforcement of each and every provision of this Contract including but not limited to the Performance Bond and Payment Bond. The Developer shall have the right to subsequently to correct any mistake, inaccuracy, error or falsification made or otherwise set forth in any approved Request for Payment and such correction may occur in any future Payment Application or in the Retention Payment to the Contractor. No Surety upon any bond shall be relieved, released or exonerated of its obligations under this Contract or any applicable bond when the Developer is unable to correct an overpayment to the Contractor due to any abandonment by the Contractor or termination by the Developer.

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

Notwithstanding anything to the contrary stated above, the Contractor may include in its Request for Payment the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

- a. The aggregate cost of materials stored off-site shall not exceed Twenty Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to be Developer in writing;
- b. Title to such materials shall be vested in the Developer as evidenced by documentation satisfactory in form and substance to the Developer, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- c. With each Contractor Request for Payment, the Contractor shall submit to the Developer a written list identifying each location where materials are stored off-

**GENERAL CONDITIONS**

site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the Developer (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;

- d. The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;
- e. Representatives of the Developer shall have the right to make inspections of the storage areas at any time; and
- f. Such materials shall be: (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the Developer; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

### 9.3.2 Purchase of Materials and Equipment and Cost Fluctuations

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Developer to assure that there will be no delays. Contractor understands that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's bid cost any wage rate increases during the Project for the Contractor's labor force as well as all other Subcontractor and vendor labor forces. Developer shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the Developer.

### 9.3.3 No Waiver

No payment by Developer hereunder shall be interpreted so as to imply that Developer has inspected, approved, or accepted any part of the Work. Contractor specifically understands that Title 24 Section 4-343 which states:

"It is the duty of the contractor to complete the work covered by his or her contract in accordance with the approved Plans and Specifications therefore. The contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector or DSA in the performance of such duties... In no case, however, shall the instruction of the Architect or registered Engineer be construed to cause work to be done with is not in conformity with the approved Plans, Specifications, and change orders..."

Notwithstanding any payment, the Developer may enforce each and every provision of this Contract which includes, but is not limited to, the Performance Bond and Payment Bond. The Developer may correct any error subsequent to any payment. In no event shall the Contractor or the Surety be released or exonerated from performance under this Contract when the Developer overpays the Contractor based upon any mistake, inaccuracy, error or falsification in any estimate that is included in any Request for Payment.

## **GENERAL CONDITIONS**

### 9.3.4 Issuance of Certificate of Payment

The Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in Article 9.6. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Project and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. In some cases, the Architect may act upon or rely on the evaluation of the Work by the Inspector. This review of Payment Applications is sometimes called a "Pencil Draft." Developer's return of a Pencil Draft shall constitute the Developer's dispute of the Payment Application that has been submitted. Contractor shall promptly respond to Pencil Drafts or Contractor's Payment Applications may be delayed. Contractor's failure to promptly respond to a Pencil Draft shall qualify as a delay in the prompt payment of a Request for Payment or Request for Retention. The foregoing representations are subject to: (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Contract Documents correctable prior to completion, and (4) specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute the Contractor's verified representation that the Contractor is entitled to payment in the amount certified.

### 9.3.5 Payment of Undisputed Contract Payments

In accordance with Public Contract Code section 7100, payments by the Developer to the Contractor for any and all undisputed amounts (including all Progress Payments, Final Payments or Retention Payment) is contingent upon submission of a proper and accurate Payment Application and the Contractor furnishing the Developer with a release of all Claims against the Developer related to such undisputed amounts. Disputed Contract Claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. If, however, the Contractor specifically excludes any Claims, the Contractor shall provide details such as a specific number of disputed days or costs of any such exclusion in accordance with Articles 4.6 and 7.7.

## **9.4 APPLICATIONS FOR PROGRESS PAYMENTS**

### 9.4.1 Procedure

9.4.1.1 *Application for Progress.* On or before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the Architect an itemized Application for Progress Payment for operations completed. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

1. The amount paid to the date of the Payment Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
2. The amount being requested under the Payment Application by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;



**GENERAL CONDITIONS**

3. The balance that will be due to each of such entities after said payment is made;
4. A certification that the As-Built Drawings and Annotated Specifications are current;
5. Itemized breakdown of Work done for the purpose of requesting partial payment;
6. An updated or approved Baseline Schedule or other Schedule updates in conformance with Article 8;
7. Failure to submit an updated Schedule for the month or any previous month;
8. The additions to and subtractions from the Contract Price and Contract Time;
9. A summary of the Retention held;
10. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Developer may require from time to time;
11. The percentage of completion of the Contractor’s Work by line item;
12. An updated Schedule of Values from the preceding Application for Payment;
13. Prerequisites for Progress Payments; and
14. Any other information or documents reasonably requested by the Developer, Architect, Inspector or CM (if applicable).

9.4.1.2 *First Payment Request.* The following items, if applicable, must be completed before the first payment request will be accepted for processing:

1. Installation of the Project sign;
2. Receipt by Architect of Submittals;
3. Installation of field office;
4. Installation of temporary facilities and fencing;
5. Submission of documents listed in the Article 9.2 relating to Contract Price breakdown;
6. Preliminary schedule analysis, due within 10 days after Notice to Proceed;

## **GENERAL CONDITIONS**

7. Contractor's Baseline Schedule (to be CPM based in conformance with Article 8);
8. Schedule of unit prices, if applicable;
9. Submittal Schedule;
10. Copies of necessary permits;
11. Copies of authorizations and licenses from governing authorities;
12. Initial progress report;
13. Surveyor qualifications;
14. Written acceptance of Developer's survey of rough grading, if applicable;
15. List of all Subcontractors, with names, license numbers, telephone numbers, and scope of work;
16. All bonds and insurance endorsements; and
17. Resumes of General Contractor's Project Manager, and if applicable, job site secretary, record documents recorder, and job site Superintendent.

9.4.1.3 *Second Payment Request.* The second payment request will not be processed until all Submittals and Shop Drawings have been accepted for review by the Architect.

9.4.1.4 *All Payment Requests.* No payment requests will be processed unless Contractor has submitted copies of the certified payroll records for the Work which correlates to the payment request and a proper CPM schedule pursuant to Article 8 is submitted.

9.4.1.5 *Final Payment Application (90% or 95%).* See Article 9.11.1

9.4.1.6 *Final Payment Application (100%).* See Article 9.11.3

## **9.5 STOP NOTICE CLAIMS AND WARRANTY OF TITLE**

The Contractor warrants title to all Work. The Contractor further warrants that all Work is free and clear of liens, claims, security interests, stop notices, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, stop notices, claims, security interests or encumbrances is grounds to make a claim against Contractor's Payment and Performance Bond to immediately remedy and defend.

If a lien or stop notice of any nature should at any time be filed against the Work or any Developer property, by any entity which has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by Developer and at Contractor's and

## **GENERAL CONDITIONS**

Surety's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom.

If the Contractor fails to furnish to the Developer within ten (10) calendar days after written demand by the Developer, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then Developer may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by Developer from any sum payable to Contractor under the Contract. In addition, any liens, stop notices, claims, security interests or encumbrances shall trigger the indemnification requirements under Article 3.15 and the Agreement Form, and shall act as a trigger under Civil Code section 2778 and 2779 requiring reimbursement for any and all costs following the Developer's written demand has been made. Any withholdings by the Developer for stop notices in accordance with Civil Code section 9358 shall not be a basis by the Contractor to make a Claim for interest penalties under Public Contract Code sections 7107 or 20104.50.

### **9.6 DECISIONS TO WITHHOLD PAYMENT**

#### **9.6.1 Reasons to Withhold Payment**

The Developer may withhold payment in whole, or in part, to the extent reasonably necessary to protect the Developer if, in the Developer's opinion, the representations to the Developer required by Article 9.4 cannot be made. The Developer may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Developer from loss because of, but not limited to:

- a. Defective Work not remedied;
- b. Stop notices served upon the Developer;
- c. Liquidated Damages assessed against the Contractor;
- d. The cost of Completion of the Contract if there exists reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Price or by the completion date;
- e. Damage to the Developer or other contractor;
- f. Unsatisfactory prosecution of the Work by the Contractor;
- g. Failure to store and properly secure materials;
- h. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, Schedule of Values, Product Data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
- i. Failure of the Contractor to maintain As-Built Drawings;
- j. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Payment Application;

**GENERAL CONDITIONS**

- k. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154));
- l. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.;
- m. Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
- n. Failure to properly maintain or clean up the Site;
- o. Payments to indemnify, defend, or hold harmless the Developer or LAUSD;
- p. Any payments due to the Developer including but not limited to payments for failed tests, or utilities changes or permits;
- q. Failure to submit an acceptable Baseline Schedule or any Schedule or Schedule update in accordance with Article 8;
- r. Failure to pay Subcontractor or suppliers as required by Article 9.8.1;
- s. Failure to secure warranties, including the cost to pay for warranties;
- t. Failure to provide releases from material suppliers or Subcontractors when requested to do so;
- u. Items deducted pursuant to Article 2.2;
- v. Incomplete Punch List items under Article 9.9.1.2 which have gone through the Article 2.2 process; or
- w. Allowances that have not been used.

9.6.2 Reallocation of Withheld Amounts

Developer may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Article 9.6.1 and 9.5. In so doing, Developer shall make such payments on behalf of Contractor. If any payment is so made by Developer, then such amount shall be considered as a payment made under Contract by Developer to Contractor and Developer shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. Developer will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, Developer may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The Developer shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If Developer deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.

**GENERAL CONDITIONS**9.6.3 Payment After Cure

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

**9.7 NONCONFORMING WORK**

Contractor shall promptly remove from premises all Work identified by Developer as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to Developer and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by Developer as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, Developer may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, Developer may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

**9.8 SUBCONTRACTOR PAYMENTS**9.8.1 Payments to Subcontractors

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

9.8.2 No Obligation of Developer for Subcontractor Payment

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

9.8.3 Payment Not Constituting Approval or Acceptance

An approved Request for Payment, a progress payment, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the Developer shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

9.8.4 Joint Checks

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

## **GENERAL CONDITIONS**

Subcontractor, or rights in such Subcontractor against the Developer. The Developer may choose to issue joint checks at Developer's sole discretion and only after all the requirements of that particular school district and county are specifically met. Some school districts cannot issue joint checks, so the ability to issue joint checks depends on the school district and the specific circumstances.

### **9.9 COMPLETION OF THE WORK**

#### **9.9.1 Close-Out Procedures**

9.9.1.1 *Incomplete Punch Items.* When the Contractor considers the Work Substantially Complete (See Article 1.1.46 for definition of Substantially Complete), the Contractor shall prepare and submit to the Developer a comprehensive list of minor items to be completed or corrected (hereinafter "Incomplete Punch Items" or "Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct the Incomplete Punch Items listed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Contractor is aware that Title 24 Section 4-343(a) provides:

“RESPONSIBILITIES. IT IS THE DUTY OF THE CONTRACTOR TO COMPLETE THE WORK COVERED BY HIS OR HER CONTRACT IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS THEREFOR. THE CONTRACTOR IN NO WAY IS RELIEVED OF ANY RESPONSIBILITY BY THE ACTIVITIES OF THE ARCHITECT, ENGINEER, INSPECTOR OR DSA IN THE PERFORMANCE OF SUCH DUTIES.

9.9.1.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* If any of the conditions noted in Article 1.1.46 as defining Substantial Completion are not met, the Inspector, Architect or Developer may reject Contractor's Incomplete Punch Items as premature. If the Architect and Inspector commence review of Incomplete Punch Items, all rights are reserved until the Project actually meets the definition of Substantially Complete. Liquidated Damages, warranties, and other contractual rights are not affected by Incomplete Punch Items unless otherwise addressed in these General Conditions.

Once the Inspector and the Architect determine the Project is Substantially Complete, a Certificate of Substantial Completion shall be issued. The Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the DSA Approved Plans so the Project may be Completed by the Contractor and a final DSA Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.

9.9.1.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List for the Project. During the Punch List period, the Contractor's Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Developer or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work pursuant to Article 2.2 of this Agreement.



**GENERAL CONDITIONS**

Failure to issue a timely written request for additional time to complete Punch List shall result in the deletion of the remaining Punch List Work pursuant to Article 2.2 and the issuance of a Deductive Change Order.

- a. Extension of Time to Complete Punch List. If Contractor cannot finish the Punch List Work during the time period allotted under Article 9.9.1.3, the Contractor may make a written request for a Non-Compensable Punch List time extension accompanied by an estimate of the number of additional days it will take to complete the Punch List Work for a written consent from the Developer to allow continued Punch List Work. Punch List time extensions are a maximum of thirty (30) days for each request and must be accompanied by an itemized valued Punch List.
- b. If there is no valued Punch List accompanying any request or if Contractor intends to undertake Punch List without the continued support and supervision of its Superintendent and Project Manager (as required under Article 3.2), the Developer, Construction Manager or Architect may issue a valued Punch List, reject the Punch List Time Extension and deduct 150% of the valued Punch List pursuant to Article 2.2 and proceed to Close-Out the Project. Contractor shall cease work on the Project and proceed to complete Contractor's Retention Payment Application and complete the Work for the Project required pursuant to Article 9.11.3.

9.9.1.4 *Developer Rejection of Written Request for Punch List Time Extensions.* Following sixty (60) Days of Punch List under Article 9.9.1.3, the Developer has the option of rejecting Punch List Time Extension requests. The Developer may proceed under Article 2.2 and deduct the value of remaining Punch List Work pursuant to Article 2.2. If the Developer rejects the Punch List Time Extension request then Contractor shall cease Work on the Project and proceed to Final Inspection pursuant to Article 9.11.2.

9.9.1.5 *Punch List Liquidated Damages to Compensate for Added Developer Project Costs.* If the total time utilized for Punch List exceeds sixty (60) days [the thirty (30) day period under Article 9.9.1.3 plus an additional thirty (30) day period that has been requested in writing], and the Developer grants an additional written Punch List Time Extension that exceeds sixty (60) days of Punch List, then Contractor shall be charged Liquidated Damages of at least \$750 per day for continued Punch List Work to partially compensate the Inspector, Architect, and Construction Manager's extended time on the Project. This Punch List Liquidated Damage number is based on anticipated cost for an Inspector on site and additional costs for the Architect and Construction Manager to reinspect Punch List items and perform the administration of the Close-out.

Contractor received thirty (30) days without any charges for Punch List Liquidated Damages and is placed on notice pursuant to this Article 9.9.1.5 that \$750 is due for each day of Punch List that exceeds sixty (60) days at \$750, a cost much lower than typical (and actual) costs for Inspection, Architect and Construction Manager time required during Punch List. Starting at ninety (90) days of Punch List (an excessive number of days to complete Punch List), the Developer shall be entitled to adjust Punch List Liquidated Damages to an estimate of the actual costs incurred to oversee, monitor and inspect the Punch List. If costs exceed \$750 per day, the anticipated extended contract charges for Inspection, Architect, Construction Manager, and any other costs that will be incurred due to the extended

## **GENERAL CONDITIONS**

Punch List shall be itemized and a daily rate of Punch List Liquidated Damages shall be presented in writing to the Contractor within five (5) days following the receipt of a written request for Punch List Time Extension by the Contractor that extends the Punch List time beyond ninety (90) days. This written notice of actual Punch List Liquidated Damages may be provided to the Contractor at any time following the first written request for Punch List Time extension requested under Article 9.9.1.3. The adjusted actual Punch List Liquidated Damage amount shall be applicable as Punch List Liquidated Damages commencing on the ninetieth (90<sup>th</sup>) day of Punch List.

### 9.9.2 Close-Out Requirements for Final Completion of the Project

- a. Utility Connections. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected
- b. As-Built Up to Date and Complete. The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built Drawings
  1. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Built Drawings
  2. Contractor is liable and responsible for inaccuracies in As-Built Drawings, even though they become evident at some future date.
  3. Upon completion of the Work and as a condition precedent to approval of Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the Developer.
  4. Developer may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As Built Drawing.
- c. Any Work not installed as originally indicated on Drawings
- d. All DSA Close-Out requirements (See DSA Certification Guide) Contractor is also specifically directed to Item 3.2 in the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- e. Submission of Form 6-C. Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the construction by Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract

## GENERAL CONDITIONS

Documents. The failure to file a DSA Form 6C has two consequences. First, the Construction of the Project will not comply with the design immunity provisions of Government Code section 830.6 and exposes the Developer and the individual Board members to personal liability for injuries that occur on the Project.

Secondly, under DSA IR A-20, since the Project cannot be Certified by DSA, no future or further Projects will be authorized so Contractor will have essentially condemned the campus from any future modernization or addition of new classrooms through their failure to file the DSA Form 6C.

1. *Execution of the DSA Form 6-C is Mandatory.* Refusal to execute the Form 6-C, which is a Final DSA Verified Report that all Work performed complies with the DSA approved Contract Documents is a violation of Education Code section 17312 and shall be referred to the Attorney General for Prosecution.
  2. *Referral to the Developer Attorney for Extortion.* If the Contractor's refusal to execute the DSA Form 6C is to leverage a Dispute, Claim or Litigation, then the matter shall also be referred to the Developer Attorney for prosecution for extortion.
  3. *Contractor shall be Responsible for All Costs to Certify the Project.* The Developer may certify the Project complies with Approved Plans and Specifications by utilizing the procedures under the Project Certification Guide (located at the DSA website). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the Developer reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.
- f. ADA Work that must be corrected to receive DSA certification. See Article 12.2.
- g. Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and Drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.
1. Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.

## **GENERAL CONDITIONS**

- h. Inspection Requirements. Before calling for final inspection, Contractor shall determine that the following Work has been performed:
1. The Work has been completed;
  2. All fire/ life safety items are completed and in working order;
  3. Mechanical and electrical Work complete, fixtures in place, connected and tested;
  4. Electrical circuits scheduled in panels and disconnect switches labeled;
  5. Painting and special finishes complete;
  6. Doors complete with hardware, cleaned of protective film relieved of sticking or binding and in working order;
  7. Tops and bottoms of doors sealed;
  8. Floors waxed and polished as specified;
  9. Broken glass replaced and glass cleaned;
  10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site;
  11. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material;
  12. Finished and decorative work shall have marks, dirt and superfluous labels removed;
  13. Final cleanup, as in Article 3.12;
  14. All Work pursuant to Article 9.11; and
  15. Furnish a letter to Developer stating that the Developer's Representative or other designated person or persons have been instructed in working characteristics of mechanical and electrical equipment.

### 9.9.3 Costs of Multiple Inspections

More than two (2) requests of the Developer to make inspections required under Article 9.9.1 shall be considered an additional service of Architect, Inspector, Engineer or other consultants shall be the Contractor's responsibility pursuant to Article 4.5 and all subsequent costs will be prepared as a Deductive Change Order.

## **9.10 PARTIAL OCCUPANCY OR USE**

### 9.10.1 Developer's Rights

## **GENERAL CONDITIONS**

The Developer may occupy or use any completed or partially completed portion of the Work at any stage. The Developer and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. If Developer and Contractor cannot agree as to responsibilities such disagreement shall be resolved pursuant to Article 4.6. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the Developer as provided under Article 9.9.1.

### 9.10.2 Inspection Prior to Occupancy or Use

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

### 9.10.3 No Waiver

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 Contract Documents.

## **9.11 COMPLETION AND FINAL PAYMENT**

### 9.11.1 Final Payment (90% Billing if Substantially Complex Finding and 95% Billing If No Finding Is Made)

The following items must be completed before the Final Payment Application will be accepted for processing at Substantial Completion of the Project:

- a. Inspector sign-off of each item in the DSA 152 Project Inspection Card;
- b. The Project has reached the Punch List items under Article 9.9.1.2 and the Project has been determined to be Substantially Complete under Article 1.1.28;
- c. Removal of temporary facilities and services;
- d. Testing, adjusting and balance records are complete;
- e. Removal of surplus materials, rubbish, and similar elements;
- f. Changeover of door locks;
- g. Deductive items pursuant to Article 9.6 and Article 2.2; and
- h. Completion and submission of all final Change Orders for the Project.

### 9.11.2 Final Inspection (Punch List Completion)

Contractor shall comply with Punch List procedures under Article 9.9.1.1, and maintain the presence of Project Superintendent and Project Manager (not replacement project superintendent or

## **GENERAL CONDITIONS**

project manager) until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List.

Upon completion of the Work under Article 9.9.1, the Contractor shall notify the Developer and Architect, who shall again inspect such Work. If the Architect and the Developer find the Work contained in the Punch List acceptable under the Contract Documents, the Work shall have reached Final Completion. Architect shall notify Contractor, who shall then submit to the Architect its Application for Retention Payment. This Application for Retention Payment shall contain any deductions under Article 9.6, including but not limited to incomplete Punch List items under Article 9.9.1.

Upon receipt and approval of Application for Retention Payment, the Architect shall issue a Form 6 stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The Developer shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Within fifteen (15) days upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the Developer, shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from the Developer, pay the amounts due Subcontractors.

If the Architect and the Developer find that the Work contained in the Punch List is unacceptable, then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Developer or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work pursuant to Article 2.2 of this Agreement.

### 9.11.3 Retainage (100% Billing for the Entire Project)

The retainage, less any amounts disputed by the Developer or which the Developer has the right to withhold pursuant to the Contract Documents (including but not limited to incomplete Punch List items under Article 9.9.1), shall be paid after approval by the Developer of the Application for Retention Payment, after the satisfaction of the conditions set forth in Article 9, the Final Inspection under Article 9.11.2 is completed, and after thirty-five (35) days after the acceptance of the Work and recording of the Notice of Completion by Developer. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any escrow agreement between the Developer and the Contractor.

- a. Procedures for Application for Retention Payment. The following conditions must be fulfilled prior to release of Retention Payment:
  1. A full and final waiver or release of all stop notices in connection with the Work shall be submitted by Contractor, including a release of stop notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.
  2. The Contractor shall have made all corrections, including all Punch List Items, to the Work which are required to remedy any



## **GENERAL CONDITIONS**

defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Developer required under the Contract Documents.

3. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, releases from the Surety and warranty bonds (if applicable) required by the Contract Documents for its portion of the Work.
4. Contractor must have completed all requirements set forth in Article 9.9
5. Contractor must have issued a Form 6C for the Project.
6. The Contractor shall have delivered to the Developer all manuals and materials required by the Contract Documents.
7. The Contractor shall have completed final clean up as required by Article 3.12
8. Contractor shall have all deductive items under Article 9.6 and Article 2.2 submitted as part of the Retention Payment.

### 9.11.4 Recording of a Notice of Completion After Punch List Period and Final Inspection.

When the Work, or designated portion thereof, is complete or the Developer has completed the Article 9.6 and/or the Article 2.2 process, whichever occurs first, the Developer will file either a Notice of Completion or a Notice of Completion noting valued Punch List items. Valued Punch List items will be deducted from the Retention Payment.

During the time when Work is being performed on the Punch List, the Project does not meet the definition of “Complete” under Public Contract Code section 7107(c)(1) even if there is “beneficial occupancy” of the Project since that has been no “cessation of labor” on the Project. Completion of Punch List under this Article is not “testing, startup, or commissioning by the public entity or its agent.” In other words, the continuing Punch List Work is Contractor labor on the Project until each and every item of Punch List Work is complete or the time periods under Article 9.9.1 have expired.

### 9.11.5 Warranties

Warranties required by the Contract Documents shall commence on the date of Completion of the entire Work. Warranty periods DO NOT commence at Substantial Completion or when a particular Subcontractor work is complete. No additional charges, extras, Change Orders, or Claims may be sought for warranties commencing from the Notice of Completion.

Developer shall have the right to utilize equipment, test, and operate as necessary for acclimation, or testing without voiding or starting warranties. Taking beneficial occupancy shall not start warranties except in the case where the Developer agrees, in writing, that warranties shall commence running or where the Developer is taking phased occupancy of specific buildings or areas and completes separate Punch Lists as further addressed in Article 4.2.7.

**GENERAL CONDITIONS****9.11.6 Time for Submission of Application for Final Payment and Retention Payment (Unilateral Processing of Final and Retention Payment Application).**

If Contractor submits a Final Payment Application which fails to include deductive items under Article 9.6, the Developer or Architect shall note this defective request for Final Payment Application. The Contractor shall be notified that specific deductive items shall be included in the Final Payment Application. If Contractor either continues to submit the Final Payment Application without deductive items under Article 9.6, or a period of 14 calendar days passes after Contractor is provided written notice of deductive items for inclusion in Final Payment Application, then Developer may either alter the Final Payment Application and recalculate the math on the Final Payment Application to address the Article 9.6 deductive items or process a unilateral Final Payment Application.

**9.11.7 Unilateral Release of Retention**

After the recordation of the Notice of Completion, or within sixty (60) days following the completion of the Punch List or the expiration of the time for completion of Punch List under Article 9.9.1, if Contractor does not make an Application for Release of Retention, the Developer may unilaterally release retention less any deducts under Article 9.6 and/or Article 2.2, withholds due to stop notices, or withholdings due to other defective Work on the Project. Developer may also choose to unilaterally release Retention after deduction of 150% of any disputed items, which may also include items under Article 9.6 and 2.2. If a deduction pursuant to Article 9.6 is made from Retention, a letter deducting specific valued items shall be considered a notice of Default under the terms of the Escrow Agreement.

**9.12 SUBSTITUTION OF SECURITIES**

The Developer will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300 as set forth in the form contained in the Bid Documents.

## **GENERAL CONDITIONS**

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

##### **10.1.1 Contractor Responsibility**

The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the Developer. All Work shall be solely at the Contractor's risk, with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105(b)(2).

Contractor shall take, and require Subcontractor to take, all necessary precautions for safety of workers on the Work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by Developer or Architect or required by conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the Work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. The name and position of person so designated shall be reported to Developer by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

##### **10.1.2 Subcontractor Responsibility**

Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

##### **10.1.3 Cooperation**

All Subcontractors and material or equipment suppliers shall cooperate fully with Contractor, the Developer, and all insurance carriers and loss prevention engineers.

##### **10.1.4 Accident Reports**

## **GENERAL CONDITIONS**

Subcontractors shall immediately, within two (2) days, report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported within four (4) days by telephone or messenger. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to the Developer and the Architect giving full details of the accident.

### 10.1.5 First-Aid Supplies at Site

The Contractor will provide and maintain at the Site first-aid supplies which complies with the current Occupational Safety and Health Regulations.

### 10.1.6 Material Safety Data Sheets and Compliance with Proposition 65

Contractor is required to have material safety data sheets available in a readily accessible place at the job site for any material requiring a material safety data sheet per the Federal "hazard communication" standard, or employees' "right-to-know law." The Contractor is also required to properly label any substance brought into the job site, and require that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

Contractor is required to comply with the provisions of California Health and Safety Code section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this Section, and to comply fully with its requirements.

### 10.1.7 Non-Utilization of Asbestos Material

NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and antinolite.

Any or all material containing greater than one-tenth of one percent (>.1%) asbestos shall be defined as asbestos-containing material.

All Work or materials found to contain asbestos or Work or material installed with asbestos-containing equipment will be immediately rejected and this Work will be removed at no additional cost to the Developer.

Decontamination and removal of Work found to contain asbestos or Work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

## **GENERAL CONDITIONS**

The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the Developer, who shall have sole discretion and final determination in this matter.

The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Interface of Work under this Contract with Work containing asbestos shall be executed by the Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless Developer and its assigns for all asbestos liability which may be associated with this work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

#### **10.2.1 The Contractor**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- a. Employees on the Work and other persons who may be affected thereby;
- b. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- c. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor is constructive owner of Project site as more fully discussed in Article 6.2.

#### **10.2.2 Contractor Notices**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

#### **10.2.3 Safety Barriers and Safeguards**

The Contractor shall 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 notifying owners and users of adjacent sites and utilities.

#### **10.2.4 Use or Storage of Hazardous Material**

## **GENERAL CONDITIONS**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Developer any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Developer and local fire authorities.

### 10.2.5 Protection of Work

The Contractor and Subcontractors shall continuously protect the Work, the Developer's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors, at their own expense, shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Developer.

The Contractor, at Contractor's expense, will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work.

Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair Work shall be obtained and paid for by Contractor.

### 10.2.6 Requirements for Existing Sites

Contractor shall (unless waived by the Developer in writing):

- a. When performing construction on existing sites, become informed and take into specific account the maturity of the students on the Site; and perform Work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange Work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with Specifications and directives of the Developer regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.
- b. Avoid performing any Work that will disturb students during testing.
- c. Provide substantial barricades around any shrubs or trees indicated to be preserved.
- d. Deliver materials to building area over route designated by Architect.
- e. Take preventive measures to eliminate objectionable dust, noise, or other disturbances.
- f. Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or directions of Architect; and not interfere with the Work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of Developer and Architect



**GENERAL CONDITIONS**

regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on the Project site.

- g. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the Developer. All filing and plan check fees shall be paid by Contractor.
- h. Provide Developer on request with Contractor's written safety program and safety plan for each site.

**10.2.7 Shoring and Structural Loading**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel Work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the Developer.

**10.2.8 Conformance within Established Limits**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Developer or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

**10.2.9 Subcontractor Enforcement of Rules**

Subcontractors shall enforce the Developer's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

**10.2.10 Site Access**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Developer, observe the boundaries of the Site designated by the Developer, park only in those areas designated by the Developer, which areas may be on or off the Site, and comply with any parking control program established by the Developer, such as furnishing license plate information and placing identifying stickers on vehicles.

**10.2.11 Security Services.**

## **GENERAL CONDITIONS**

The Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in the Developer's sole discretion.

### **10.3 EMERGENCIES**

#### 10.3.1 Emergency Action

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7.

#### 10.3.2 Accident Reports

The Contractor shall promptly report in writing to the Developer all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses in conformance with Article 10.1.4. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported in accordance with Article 10.1.4, immediately by telephone or messenger to the Developer.

### **10.4 HAZARDOUS MATERIALS**

#### 10.4.1 Discovery of Hazardous Materials

In the event the Contractor encounters or suspects the presence on the job site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Developer and the Architect in writing, whether or not such material was generated by the Contractor or the Developer. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Developer and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Developer and the Contractor.

#### 10.4.2 Hazardous Material Work Limitations

In the event that the presence of hazardous materials is suspected or discovered on the Site (except in cases where asbestos and other hazardous material Work in the Contractor's responsibility), the Developer shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Developer, as certified by an independent testing laboratory and approved by the appropriate government agency.

#### 10.4.3 Indemnification by Contractor for Hazardous Material Caused by Contractor

## **GENERAL CONDITIONS**

In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Developer for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Developer and its agents, officers, and employees, and LAUSD from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.

### 10.4.4 Terms of Hazardous Material Provision

The terms of this Hazardous Material provision shall survive the completion of the Work and/or any termination of this Contract.

**GENERAL CONDITIONS****ARTICLE 11  
INSURANCE AND BONDS****11.1 CONTRACTOR'S LIABILITY INSURANCE****11.1.1 Insurance Requirements**

Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least an A-VIII status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the Developer and LAUSD from claims set forth below, which may arise out of or result from the Contractor's Work under the Contract and for which the Contractor may be legally liable, whether such Work are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any required insurance shall not contain any exclusion that applies to the type of work performed by the Contractor under the Contract Documents.

- a. Claims for damages because of bodily injury, sickness, disease, or death of any person Developer or LAUSD would require indemnification and coverage for employee claim;
- b. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- c. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- d. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
- e. Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- f. Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
- g. Claims involving sudden or accidental discharge of contaminants or pollutants.

**11.1.2 Specific Insurance Requirements**

Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

**GENERAL CONDITIONS**

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$5,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

- (a) Per occurrence (combined single limit) \$5,000,000.00
- (b) Project Specific Aggregate (for this Project only) \$5,000,000.00
- (c) Products and Completed Operations (aggregate) \$5,000,000.00
- (d) Personal and Advertising Injury Limit \$1,000,000.00

Insurance Covering Special Hazards

The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- (a) Automotive and truck where operated in amounts \$1,000,000.00
- (b) Material Hoist where used in amounts \$1,000,000.00
- (c) Explosion, Collapse and Underground (XCU coverage) \$1,000,000.00
- (d) Hazardous Materials \$1,000,000.00

In addition, provide Excess Liability Insurance coverage in the amount of Four Million Dollars (\$4,000,000.00).

11.1.3 Subcontractor Insurance Requirements

The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under Article 11.1 in like amounts. A “claims made” or modified “occurrence” policy shall not satisfy the requirements of Article 11.1 without prior written approval of the Developer.

11.1.4 Additional Insured Endorsement Requirements

The Contractor shall name, on any policy of insurance required under Article 11.1, the Developer, LAUSD, CM, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Contractor, the Developer, LAUSD, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the Developer in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to

## **GENERAL CONDITIONS**

11.1 must be designated in the policy as primary to any insurance obtained by the Developer and LAUSD. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

### **11.2 WORKERS' COMPENSATION INSURANCE**

During the term of this Contract, the Contractor shall provide workers' compensation and employer's liability insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Developer certificates of insurance as required under Article 11.6 and in compliance with Labor Code § 3700.

Workers' compensation limits as required by the Labor Code, but not less than \$1,000,000 and employers' liability limits of \$1,000,000 per accident for bodily injury or disease.

### **11.3 BUILDER'S RISK/ "ALL RISK" INSURANCE**

#### **11.3.1 Course-of-Construction Insurance Requirements**

The Contractor, during the progress of the Work and until final acceptance of the Work by Developer upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the Developer and the Architect as additional named insureds, and any other person with an insurable interest as designated by the Developer.

The Contractor shall submit to the Developer for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no Claims for such loss or damage shall be recognized by the Developer nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.



**GENERAL CONDITIONS****11.4 FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the Developer. This requirement may be waived upon confirmation by the Developer that such coverage is provided under the Builder's Risk Insurance being provided.

**11.5 AUTOMOBILE LIABILITY**

11.5.1 The Developer, Architect and Construction Manager, Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the Developer, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Developer, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the Developer, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from Work performed by the Contractor.

11.5.2 Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance to include all autos, owned, non-owned, and hired, with limits of \$1,000,000 per accident for bodily injury and property damage.

**11.6 OTHER INSURANCE**

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

**11.7 PROOF OF INSURANCE**

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the Developer for approval subject to the following requirements:

- a. Certificates and insurance policies shall include the following clause:

“This policy and any coverage shall not be suspended, voided, non-renewed, canceled, or reduced in required limits of liability or amounts of insurance or coverage until notice has been mailed via certified mail to the Developer. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.”

**GENERAL CONDITIONS**

- b. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- c. Certificates of insurance shall clearly state that the Developer and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Developer.
- d. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Developer.

**11.8 COMPLIANCE**

In the event of the failure of Contractor to furnish and maintain any insurance required by this Article 11, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Developer, LAUSD and the Architect.

**11.9 WAIVER OF SUBROGATION**

Contractor waives (to the extent permitted by law) any right to recover against the Developer for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the Developer.

The provisions of this Article are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Developer and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

**11.10 PERFORMANCE AND PAYMENT BONDS****11.10.1 Bond Requirements**

Unless otherwise specified in the Supplemental Conditions, prior to commencing any portion of the Work, the Contractor shall furnish separate Payment and Performance Bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate Surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Developer, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Developer.

## **GENERAL CONDITIONS**

To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the Surety. If the Contractor fails to furnish the required bonds, the Developer may terminate the Contract for cause.

### 11.10.2 Surety Qualification

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted Surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

### 11.10.3 Alternate Surety Qualifications

If a California-admitted Surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the Developer.

**GENERAL CONDITIONS****ARTICLE 12  
UNCOVERING AND CORRECTION OF WORK****12.1 COMPLIANCE WITH TITLE 24 INSTALLATION REQUIREMENTS**

Contractor is aware of the requirements governing Contractor's Work under title 24 Section 4-343 which provides, in pertinent part:

**4-343. Duties of the Contractor.**

(a) **Responsibilities.** It is the duty of the contractor to complete the Work covered by his or her contract in accordance with the approved Plans and Specifications therefore. The contractor in no way is relieved of any responsibility by the activities of the architect, engineer, Inspector or DSA in the performance of such duties.

(b) **Performance of the Work.** The contractor shall carefully study the approved Plans and Specifications and shall plan a schedule of operations well ahead of time. If at any time it is discovered that Work is being done which is not in accordance with the approved Plans and Specifications, the contractor shall correct the Work immediately. All inconsistencies or items which appear to be in error in the Plans and Specifications shall be promptly called to the attention of the architect or registered engineer, through the Inspector, for interpretation or correction. In no case, however, shall the instruction of the architect or registered engineer be construed to cause Work to be done which is not in conformity with the approved Plans, Specifications, and Change Orders. The contractor must notify the Project Inspector, in advance, of the commencement of construction of each and every aspect of the Work.

**12.1.1 Issuance of Notices of Non-Compliance**

The Inspector may issue a Notice of Non-Compliance on the Project indicating deviation from Plans and Specifications. It is Contractor's responsibility to correct all deviations from the approved Plans and Specifications unless the Developer has issued an Immediate Change Directive. In such case, the Contractor shall proceed with the Work with the understandings of the Developer as set forth in the ICD and as specifically noted in Article 7.3.

**12.2 SPECIAL NOTICE OF AMERICAN'S WITH DISABILITIES ACT**

Some of the requirements in the Plans and Specifications are meant to comply with the Americans with Disabilities Act ("ADA"). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights violation and subjects the Developer to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney's fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor shall take special care to meet all ADA requirements detailed in the Plans and Specifications. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.

## **GENERAL CONDITIONS**

### 12.2.1 Indemnification of ADA Claims

Contractor shall indemnify, hold harmless and defend the Developer and LAUSD from ADA claims arising from the failure to comply with the Plans and Specifications. Further, any withholdings for ADA violations under Article 9.6 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project.

## **12.3 UNCOVERING OF WORK**

### 12.3.1 Uncovering Work for Required Inspections

Work shall not be covered without the Inspector's review and the Architect's knowledge that the Work conforms with the requirements of the approved Plans and Specifications (except in the case of an ICD under Article 7.3). Inspector must be timely notified of inspections and of new areas so Work can be inspected at least 48 hours before opening a new area (For example, see DSA Form 156 for Commencement/Completion of Work Notification which requires "at least 48 hour" advance notification of a new area). An Inspector must comply with DSA protocols for signing each category or phase of Work under DSA Form 152 (in compliance with the Form 152 Manual) or a Notice of Deviation (DSA Form 154) will be issued requiring the Work that was not inspected be uncovered for inspection. Thus, if a portion of the Work is covered without inspection or Architect approval, is subject to a Notice of Non-Compliance for being undertaken without inspection, or otherwise not in compliance with the Contract Documents, after issuance of a Written Notice of Non-Compliance (Form 154) or a written notice to uncover Work, Contractor shall promptly uncover all Work (which includes furnishing all necessary facilities, labor, and material) for the Inspector's or the Architect's observation and such Work shall be replaced at the Contractor's expense without change in the Contract Sum or Time.

### 12.3.2 Costs for Inspections Not Required

If a portion of the Work has been covered is believed to be Non-Conforming to the Plans and Specifications, even if the Form 152 for the category of Work has been signed by the Inspector, the Inspector or the Architect may request to see such Work, and it shall be promptly uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order and shall, be charged to the Developer. If such Work is not in accordance with Contract Documents, the Contractor shall be responsible for all costs to uncover the Work, delays incurred to uncover the Work, and Contractor shall pay all costs to correct the Non-Conforming construction condition unless the condition was caused by the Developer or a separate contractor, in which event the Developer shall be responsible for payment of such costs to the Contractor.

## **12.4 CORRECTION OF WORK**

### 12.4.1 Correction of Rejected Work

The Contractor shall promptly correct the Work rejected by the Inspector or the Developer upon recommendation of the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not Fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including cost for delays that may be incurred by Contractor or Subcontractors, the cost for additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made

## **GENERAL CONDITIONS**

necessary thereby (including costs for preparing a CCD, DSA CCD review fees, and additional inspection and special inspection costs).

### 12.4.2 One-Year Warranty Corrections

If, within one (1) year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under Article 9.9.1, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Developer to do so unless the Developer has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under this Article 12.4.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Developer shall give such notice promptly after discovery of the condition.

### 12.4.3 Developer's Rights if Contractor Fails to Correct

If the Contractor fails to correct nonconforming Work within a reasonable time, the Developer may correct the Work and seek a Deductive Change Order, pursuant to Article 9.6 or Article 2.2.



## **GENERAL CONDITIONS**

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

#### **13.2 SUCCESSORS AND ASSIGNS**

The Developer and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. 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.

#### **13.3 WRITTEN NOTICE**

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, 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 to the last business address known to the party giving notice.

#### **13.4 RIGHTS AND REMEDIES**

##### **13.4.1 Duties and Obligations Cumulative**

Duties and obligations imposed by the Contract 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.

##### **13.4.2 No Waiver**

No action or failure to act by the Inspector, the Developer, or the Architect shall constitute a waiver of a right or duty afforded them under the Contract Documents, 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.

#### **13.5 TESTS AND INSPECTIONS**

##### **13.5.1 Compliance**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Division 1, Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

##### **13.5.2 Independent Testing Laboratory**

## **GENERAL CONDITIONS**

The Developer will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the Developer's representative and not by the Contractor. See Articles 3.13.1 and 4.3.6 regarding costs or expenses of inspection or testing outside of the Project Site.

### 13.5.3 Advance Notice to Inspector

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

### 13.5.4 Testing Off-Site

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

### 13.5.5 Additional Testing or Inspection

If the Inspector, the Architect, the Developer, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under Article 13.5.1, the Inspector will, upon written authorization from the Developer, make arrangements for such additional testing, inspection, or approval. The Developer shall bear such costs except as provided in Articles 13.5.6 and 13.5.7.

### 13.5.6 Costs for Retesting

If such procedures for testing, inspection, or approval under Articles 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Developer, invoiced to the Contractor, and deducted from the next Progress Payment.

### 13.5.7 Costs for Premature Test

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Developer for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Inspector's and Architect's fees and expenses, and the amount of the invoice shall be deducted from the next Progress Payment.

## **13.6 TRENCH EXCAVATION**

### 13.6.1 Trenches Greater Than Five Feet

Pursuant to Labor Code section 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of

## **GENERAL CONDITIONS**

excavation, submit to the Developer or a registered civil or structural engineer employed by the Developer or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

### 13.6.2 Excavation Safety

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

### 13.6.3 No Tort Liability of Developer

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

### 13.6.4 No Excavation without Permits

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

## **13.7 WAGE RATES, TRAVEL, AND SUBSISTENCE**

### 13.7.1 Wage Rates

Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the Developer has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations (“Director”). These rates are on file at the administrative office of the Developer and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform Work on the Project, but such Work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

### 13.7.2 Holiday and Overtime Pay

Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law.

### 13.7.3 Wage Rates Not Affected by Subcontracts

## **GENERAL CONDITIONS**

The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

### 13.7.4 Per Diem Wages

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

### 13.7.5 Forfeiture and Payments

Pursuant to Labor Code §1775, the Contractor shall forfeit to the Developer, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

### 13.7.6 Monitoring and Enforcement by Labor Commissioner

Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE). The Contractor and all subcontractors shall be required to furnish, at least monthly, certified payroll records directly to the Labor Commissioner in accordance with Labor Code section 1771.4. All payroll records shall be furnished in a format required by the Labor Commissioner. The Contractor and all subcontractors must sign up for, and utilize, the Labor Commissioner's electronic certified payroll records submission system. The Developer will have direct and immediate access to all CPRs for the Project that are submitted through the Labor Commissioner's system. The Developer can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

The Labor Commissioner/ DLSE may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the Work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the Labor Commissioner/DLSE to ensure compliance with prevailing wage requirements. The Labor Commissioner/DLSE shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner/DLSE.

Any lawful activities conducted or any requests made by the Labor Commissioner/DLSE shall not be the basis for any delays, claims, costs, damages or liability of any kind against the Developer

## **GENERAL CONDITIONS**

by the Contractor. Contractor and all subcontractors shall cooperate and comply with any lawful requests by the Labor Commissioner/ DLSE. The failure of the Labor Commissioner, DLSE, or any other entity related to the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

Prior to commencing any Work on the Project, the Contractor shall post the required notice/poster required under the California Code of Regulations and Labor Code section 1771.4 in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the Labor Commissioner's website.

### **13.7.7 Labor Compliance Program**

Pursuant to Labor Code Section 1771.7 and the Development Agreement executed between the Developer and the LAUSD, this Project will be subject to the LAUSD's approved Labor Compliance Program (Final Approval, December 27, 1996). The Labor Compliance Program includes, without limitation, provisions requiring Contractor to comply with the prevailing rates of wages, maintenance and submission of weekly certified payroll records, employment of apprentices and, compliance with legal hours of work, and debarment. Contractor, and Subcontractors or any tier, are required to comply with the requirements of the Labor Compliance Program, at no additional cost to Developer. Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work, requiring each Subcontractor, of every tier, who furnishes any labor for the performance of Work on the Project, to comply with these provisions at no additional cost. Contractor and all Subcontractors shall comply with California Labor Code §§1720-1781, applicable regulations and the Labor Compliance Program, and shall pay appropriate penalties for failure to comply pursuant to the California Labor Code, including, but not limited to, Sections 1775, 1776, 1777.7 and 1813, and the Labor Compliance Program. Contractor will be responsible for all failures by all Subcontractors, to comply with the requirements of the Labor Compliance Program. Contractor shall attend any pre-construction meetings held by Developer and/or the Labor Compliance Program to discuss labor requirements. Contractor and all Subcontractors shall allow the Developer, the LAUSD, its Labor Compliance Program, the Department of Industrial Relations and designated representatives of each to conduct worker interviews at the Site during working hours. Compliance by Contractor with the requirements of this Article shall be a condition to Contractor's right to payment under its Applications for Payment. Contractor shall submit the certified payroll records of Contractor and all subcontractors, of any tier, including Non-Performance payroll records, on at least a monthly basis, to the Labor Compliance Program in the method provided by the LAUSD Web-based Certified Payroll Reporting System. For questions or assistance concerning the LAUSD Labor Compliance Program, contact the Labor Compliance Office at (213) 241-4665 or lcp@lausd.net, or visit [www.laschools.org/lcp](http://www.laschools.org/lcp). Copies of the prevailing rates of per diem wages and the Labor Compliance Program requirements are available to the Contractor and Subcontractors at [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr).

### **13.7.8 Project Stabilization Agreement**

This Project is being completed in accordance with the "Development Agreement" that was executed between the Developer and LAUSD and, as such, the Project must be completed in accordance with the terms and conditions agreed upon between the Developer and LAUSD. To that end, the Project shall be completed by the Contractor, and its subcontractors of any tier, all in accordance with the Los Angeles Unified School District Project Stabilization Agreement for New School Construction

## **GENERAL CONDITIONS**

and Major Rehabilitation adopted by the LAUSD's Board of Education. A copy of the Project Stabilization Agreement and all requirements concerning the Project Stabilization Agreement may be viewed and downloaded at <http://www.laschools.org/new-site/project-stabilization/>.

Contractor agrees to be bound by the Project Stabilization Agreement and to require all Subcontractors to do so. Compliance by Contractor with the requirements of the Project Stabilization Agreement shall be a condition of Contractor's right to payment. Any requirement currently set forth in, or hereafter developed, adopted or implemented pursuant to the terms of the Project Stabilization Agreement, that is applicable to the Project, that is not set forth herein or that is by mistake incorrectly stated, shall be deemed to be inserted in these General Conditions and shall be read and enforced as though it were included herein; and, if through mistake or otherwise any such requirement is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by Modification to make such insertion or correction.

The Project Stabilization Agreement includes, among other provisions and without limitation: prohibitions on work stoppages or disruptive activity, a dispute resolution procedure, and goals for local hiring. Contractor, subcontractors and all others covered by the Project Stabilization Agreement, regardless of tier, are required to follow the terms and conditions of the Project Stabilization Agreement. Failure to follow the terms of the Project Stabilization Agreement shall be considered a breach of contract.

A representative of the Contractor with the authority to bind the Contractor is required to sign the Letter of Assent which evidences the Contractor's agreement to be bound by the terms and conditions of the Project Stabilization Agreement for the duration of the work contained in this Agreement. The Contractor shall sign and submit the required Letter of Assent in accordance with the requirements set forth at <http://www.laschools.org/new-site/project-stabilization> and within five (5) days after notification of the award of the Contract. Failure to comply with these requirements shall result in forfeiture of the Contractor's bid security, and Developer may award the Contract to the next lowest bidder, or in its sole discretion, reject all bids.

No covered subcontractor, or subcontractor of any tier, will be authorized to access the job site for the Work contained in this Agreement until a representative with authority to bind the subcontractor has signed and submitted to the LAUSD and Developer a Letter of Assent which evidences the subcontractor's agreement to be bound by the terms and conditions of the Project Stabilization Agreement for the duration of the work contained in this Agreement. A copy of the Project Stabilization Agreement may be obtained as noted above and the Contractor shall provide a copy of the Project Stabilization Agreement to all subcontractors or every tier. All subcontractors shall submit its signed Letter of Assent at the earliest of the following: (1) at the statutorily required Labor Compliance Pre-Job Conference; (2) within 48 hours after the award of the work contained in this Contract to the successful bidder; or (3) no later than 48 hours prior to the time the subcontractor desires to gain site access and commence Work at the site. This access to the site includes initial mobilization of equipment and materials. The subcontractors shall sign and submit the required Letter of Assent in accordance with the requirements set forth at <http://www.laschools.org/new-site/project-stabilization>.

### **13.8 RECORDS OF WAGES PAID**

#### **13.8.1 Payroll Records**

- a. Pursuant to §1776 of the Labor Code, the Contractor and each Subcontractor shall keep an accurate payroll record showing the name, address, social security



**GENERAL CONDITIONS**

number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

All payroll records as specified in Labor Code §1776 of the Contractor and all Subcontractors shall be certified and furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(3) on a monthly basis (or more frequently if required by the Developer or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Payroll records as specified in Labor Code §1776 shall be certified and submitted to the Developer with each application for payment. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  2. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of Developer, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
  3. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the Developer, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- b. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.
  - c. The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
  - d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Developer, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished

**GENERAL CONDITIONS**

to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- e. The Contractor shall inform the Developer of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- f. The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the Developer, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- g. This Project is subject to labor compliance monitoring, which will be conducted by the LAUSD. Contractor shall submit the certified payroll records of Contractor and all subcontractors, of any tier, including Non-Performance payroll records, on at least a monthly basis, to the Labor Compliance Program in the method provided by the LAUSD Web-based Certified Payroll Reporting System. All payroll records will be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. For questions or assistance concerning the LAUSD Labor Compliance Program, contact the Labor Compliance Office at (213) 241-4665 or [lcp@lausd.net](mailto:lcp@lausd.net), or visit [www.laschools.org/lcp](http://www.laschools.org/lcp). Any Contractor to whom a contract for the Work is awarded by the Developer shall comply with the provisions of the California Labor Code, as well as the LAUSD's Labor Compliance Program for the Project, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the Work is to be performed in accordance with, without limitation, Sections 1771, 1773.1, 1774, 1775, 1776 and 1813 of the California Labor Code and the obligation to comply with Section 1777.5 of the California Labor Code governing employment of apprentices. Copies of the prevailing rates of per diem wages are available to any interested party at [www.laschools.org/contractor/lc](http://www.laschools.org/contractor/lc) or [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr).

Responsibility for compliance with this Article shall rest upon the Contractor.

### 13.8.2 Withholding of Contract Payments & Penalties

The Developer may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

**GENERAL CONDITIONS**

- a. The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- b. The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- c. The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- d. The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- e. The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

**13.9 APPRENTICES****13.9.1 Apprentice Wages and Definitions**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

**13.9.2 Employment of Apprentices**

Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

**13.9.3 Submission of Contract Information**

## **GENERAL CONDITIONS**

Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the Developer if requested. Within 60 days after concluding Work on the Project, the Contractor and Subcontractors shall submit to the Developer, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

### 13.9.4 Apprentice Fund

The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.

### 13.9.5 Prime Contractor Compliance

The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.

## **13.10 ASSIGNMENT OF ANTITRUST CLAIMS**

### 13.10.1 Application

Pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Developer all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Retention Payment to the Contractor, without further acknowledgment by the parties. If the Developer receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Developer any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Developer as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

### 13.10.2 Assignment of Claim

## **GENERAL CONDITIONS**

Upon demand in writing by the assignor, the Developer shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Developer has not been injured thereby or the Developer declines to file a court action for the cause of action.

### **13.11 STATE AND DEVELOPER CONDUCTED AUDITS**

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the Developer, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five (5) years after Retention Payment is made or a Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.

Pursuant to the remedies under Public Contract Code section 9201 and Government Code section 930.2, Contractor, through execution of this Agreement, also agrees the Developer shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this "Audit" is to quickly and efficiently resolve Disputes based on the actual costs incurred and to reduce the uncertainty in resolving Disputes with limited information. The Developer shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or Developer. In the event the independent auditor determines that Change Orders, response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment are in error, or have has any other concerns or questions, the Auditor shall report the results of the Audit findings to the Developer and provide a copy to the Contractor after giving the Developer Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 4.6.2 entitled Disputes.

If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the Developer and the Developer's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to debar the Contractor under Article 15 for failure to preserve records under Article 13.11 and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce job cost data tied to job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce Daily Reports (prepared at or near the time of the Work actually took place (See Article 3.16) shall be presumed an intentional failure to produce key audited records.

If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid tabulation utilized in submitting Contractor's bid for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the Developer and the Developer's counsel. This bid tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for

## **GENERAL CONDITIONS**

the bid tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the bid tabulation for inspection to prove the authenticity of the underlying bid tabulation. Failure to produce the bid tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the bid tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the bid tabulation was not produced and the bid tabulation information was unfavorable to the Contractor. The evidence may also be used in debarment proceedings, and noted as an exception to an Audit findings.

Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to the Audit findings and if either there is no Dispute of the Audit findings under Article 4.6 or if the result after utilizing the Disputes Clause confirms the Audit findings, the Developer may seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims and may also undertake debarment proceedings under Article 15 of these General Conditions.

### **13.12 STORM WATER POLLUTION PREVENTION**

#### **13.12.1 Application**

This Section addresses the preparation, implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site. This includes the elimination of pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas. The Developer will not issue a Notice to Proceed until Contractor has prepared by a qualified individual and obtained approval of the Permit Registration Documents (“PRDs”) that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents from all applicable Local Governing Agencies including the Regional Water Quality Control Board. The Contractor shall also secure a certification that the Project has met all of the conditions of the General Construction Activity Storm Water Permit (GCASP) and comply with all applicable local, state and federal regulations governing storm water pollution prevention.

#### **13.12.2 References and Materials**

- California Stormwater Quality Association New Development and Redevelopment Best Management Practice Handbook
- 2009 California Stormwater Quality Association Construction BMP Handbook .
- State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. Available on-line at:
- [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/construction.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml).- Use materials of a class, grade and type needed to meet the performance described in the BMP Handbook.

#### **13.12.3 Preparation and Approval**

The Contractor shall prepare by a qualified individual the PRDs that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required



## **GENERAL CONDITIONS**

documents. The Contractor's Qualified SWPPP Developer ("QSD") shall prepare the Storm Water Pollution Prevention Plan (SWPPP) as required to comply with storm water pollution regulations for project sites with storm water discharges associated with construction activity such as clearing or demolition, grading, excavation and other land disturbances. The SWPPP shall apply to all areas that are directly related to construction activity, including but not limited to staging areas, storage yards, material borrow areas, and access roads.

13.12.3.1 The Contractor shall prepare and submit to the Local Governing Agencies and the Developer the SWPPP for review and approval if the project sites, new or existing, with land disturbance of 1 or more acres (or less than 1 acres if part of a common plan of development); the construction activity that results in land surface disturbances of less than one acre is part of a larger common plan of development or sale of one or more acres of disturbed land surface; or the construction activity associated with Linear Underground/Overhead Projects ("LUPs") including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.

13.12.3.2 The Contractor shall also pay annual renewal fee(s) until the contract is completed and make all such checks payable to the State Water Resources Control Board. The Notice of Intent must be submitted at least two weeks prior to the commencement of construction activities.

13.12.3.3 The Contractor shall prepare the SWPPP by following the format in Sections 2, 3, 4 and Appendices A through F of the California Stormwater BMP Handbook - Construction, January 2009 edition, published by the California Stormwater Quality Association. The publication is available from:

California Stormwater  
Quality Association  
P.O. Box 2105  
Menlo Park, CA 94026-2105  
Phone: (650) 366-1042  
E-mail: [info@casqa.org](mailto:info@casqa.org)

or

<https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx>

13.12.3.4 Where land disturbance is less than 1 acre, any BMPs indicated in the BMP Handbook needed to prevent or minimize storm water pollution shall be implemented at no extra cost to the Developer.

13.12.3.5 Within two weeks after Award of Contract by the Developer, the Contractor shall submit to the Developer's Civil Engineer one copy of the PRDs including the SWPPP for review. After the Developer's approval, the Contractor shall provide approved copies of the SWPPP as follows: one copy each to the Project Inspector, Construction Manager, Architect, Commissioned Architect and Developer's Civil Engineer.

**GENERAL CONDITIONS**13.12.4 Implementation

The Contractor shall implement the Storm Water Pollution Prevention Plan by doing the following:

- a. Obtain a Waste Discharger Identification (WDID) number from the SWRCB before beginning construction. This number will be issued once your PRDs are administratively accepted and fee is received.
- b. Keep the SWPPP, REAPs, monitoring data on the construction site.
- c. Employ a Qualified SWPPP Practitioner (QSP) to implement the SWPPP during construction and develop Rain Event Action Plans ("REAPs").
- d. Install, inspect, maintain and monitor BMPs required by the General Permit.
- e. Install perimeter controls prior to starting other construction work at the site.
- f. Contain on-site storm water at the jobsite. Do not drain on-site water directly into the storm drain.
- g. Implement the SWPPP.
- h. Provide SWPPP and BMP implementation training for those responsible for implementing the SWPPP.
- i. Designate trained personnel for the proper implementation of the SWPPP.
- j. Conduct monitoring, as required, and assess compliance with the Numeric Action Levels (NALs) or Numeric Effluent Limitations (NELs) appropriate to your project.
- k. Report monitoring data:
  1. Maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction site until construction is completed.
  2. Have a QSD revise the SWPPP as needed to reflect the phases of construction and to suit changing site conditions and instances when properly installed systems are ineffective.
  3. Assist the Developer with entering any necessary data or information into the Stormwater Multi-Application and Reporting System ("SMARTS") system.
- l. At the end of Construction Contract:

**GENERAL CONDITIONS**

1. Submit Notice of Termination (NOT) into the SMARTS when construction is complete and conditions of termination listed in the NOT have been satisfied. A copy of the NOT can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/construction.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml).
2. Leave in place storm water pollution prevention controls needed for post-construction storm water management and remove those that are not needed as determined by the Developer. Thereafter, left-in-place controls will be maintained by the Developer.
3. Provide Site Monitoring Reports, SWPPP revisions, Compliance Certifications and related documents to the Developer. Post-construction storm water operation and management plan as mentioned in the compliance certifications are considered to be in place at the end of the Construction Contract.

**13.12.5 Monitoring**

The Contractor shall conduct examination of storm water pollution prevention controls as required by the State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. This includes properly qualified personnel performing all required monitoring, testing, inspections and monitoring. The Contractor shall also conduct examination of storm water pollution prevention controls, as well as before and after each storm event in compliance with the State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit) (SWRCB, 2009).and at least once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or BMP changes as soon as feasible. All maintenance related to a storm event should be completed within 48 hours of the storm event. The Contractor shall also prepare and maintain, at the jobsite, a log of each inspection using Site Monitoring Report forms.

**13.12.6 Liabilities and Penalties**

- a. Review of the SWPPP and inspection logs by the Developer shall not relieve the Contractor from liabilities arising from non-compliance with storm water pollution regulations.
- b. Payment of penalties for non-compliance by the Contractor shall be the sole responsibility of the Contractor and will not be reimbursed by the Developer.
- c. Compliance with the Clean Water Act pertaining to construction activity is the sole responsibility of the Contractor. For any fine(s) levied against the Developer due to non-compliance by the Contractor, the Developer will deduct from the final payment due the Contractor the total amount of the fine(s) levied on the Developer, plus legal and associated costs.

**GENERAL CONDITIONS**

- d. The Contractor shall submit to the Developer a completed NOI for change of information (Construction Site Information and Material Handling/Management Practices).

## **GENERAL CONDITIONS**

### **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

##### **14.1.1 Grounds for Termination**

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

- a. Issuance of an order of a court or other public authority having jurisdiction; or
- b. An act of the United State or California government, such as a declaration of national emergency.

##### **14.1.2 Notice of Termination**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the Developer, terminate the Contract and recover from the Developer payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

#### **14.2 TERMINATION BY THE DEVELOPER FOR CAUSE**

##### **14.2.1 Grounds for Termination**

The Developer may terminate the Contractor and/or this Contract for the following reasons:

- a. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- b. Persistently or repeatedly is absent, without excuse, from the job site;
- c. Fails to make payment to Subcontractors, suppliers, materialmen, etc.;
- d. Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- e. Fails to provide a schedule or fails or refuses to update schedules required under the Contract;
- f. Falls behind on the Project and refuses or fails to undertake a Recovery Schedule;
- g. If the Contractor has been debarred from performing Work

**GENERAL CONDITIONS**

- h. Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or
- i. Otherwise is in substantial breach of a provision of the Contract Documents.

**14.2.2 Notification of Termination**

When any of the above reasons exist, the Developer may, without prejudice to any other rights or remedies of the Developer and after giving the Contractor and the Contractor's Surety written notice of seven (7) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the Surety:

- a. Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- b. Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the Developer (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the Developer which the Developer has chosen to accept;
- c. Complete the Work by any reasonable method the Developer may deem expedient, including contracting with a replacement contractor or contractors; and,
- d. Agree to accept a takeover and completion arrangement with Surety that is acceptable to the Developer Board.

**14.2.3 Takeover and Completion of Work after Termination for Cause**

A Termination for Cause is an urgent matter which requires immediate radiation since Project Work is open and incomplete, the site is subject to vandalism and theft, the Project site is considered a public nuisance, and there is a possibility of injury and deterioration of the Project Work and materials. Thus, the Developer shall be entitled to enter a takeover contract to either remediate the unfinished condition or complete the Work for this Project.

**14.2.4 Payments Withheld**

If the Developer terminates the Contract for one of the reasons stated in Article 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its Surety.

**14.2.5 Payments upon Completion**

If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and its Surety shall pay the difference to the Developer. The amount to be paid to the Contractor, or Developer, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.



**GENERAL CONDITIONS****14.3 TERMINATION OF CONTRACT BY DEVELOPER (CONTRACTOR NOT AT FAULT)****14.3.1 Termination for Convenience**

Developer may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the Developer deems expedient to complete the Project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the Developer or Contractor make it impossible or against the Developer's interest to complete the Project. In such a case, the Contractor shall have no Claims against the Developer except for: (1) the actual cost for approved labor, materials, and services performed in accordance with the Contract Documents which have not otherwise been previously paid for and which are supported and documented through timesheets, invoices, receipts, or otherwise; and (2) profit and overhead of ten percent (10%) of the approved costs in item (1); and (3) termination cost of five percent (5%) of the approved costs in item (1). Contractor acknowledges and agrees that if the Developer (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the Developer which the Developer has chosen to accept.

**14.3.2 Non-Appropriation of Funds/ Insufficient Funds**

In the event that sufficient funds are not appropriated to complete the Project or the Developer determines that sufficient funds are not available to complete the Project, Developer may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the Developer exercises this option, the Developer shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials not otherwise already paid for by the Developer up to the time of termination under this Paragraph shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the Developer. Developer may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as Developer may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

**14.4 REMEDIES OTHER THAN TERMINATION**

If a default occurs, the Developer may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Article 14.2, do any of the following:

- a. Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the Developer may deem expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the Developer on demand;
- b. If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the Developer may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the Developer's order and complete the same within the time period given by the Developer in its notice to the Contractor; or

## **GENERAL CONDITIONS**

- c. Initiate procedures to declare the Contractor a non-responsible bidder for a period of two (2) to five (5) years thereafter.

All amounts expended by the Developer in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the Developer at the maximum legal rate. The Developer may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the Developer, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect and the Developer shall direct, all Work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Article be deemed to constitute a waiver by the Developer of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Article are in addition to, and not in lieu of, any other rights or remedies that the Developer may have at law or in equity.

**GENERAL CONDITIONS****ARTICLE 15  
DEBARMENT****15.1 DEBARMENT MEANS THERE HAS BEEN A FINDING THAT THE CONTRACTOR IS NOT RESPONSIBLE.**

During the course of the Project, or if it is determined through Change Orders, Claims, or Audit that a Contractor is not responsible, the Developer may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on Developer contracts for a specified period of time, which generally will not exceed five (5) years, but may exceed five (5) years or be permanent if the circumstances warrant such debarment. In addition to the debarment proceeding, a finding that a Contractor is to be debarred shall result in the termination of any or all existing Contracts the Contractor may have with the Developer.

**15.2 BOARD FINDING**

The Developer may debar a Contractor if the Board, or the Board's delagatee, in its discretion, finds the Contractor has done any of the following:

15.2.1 Intentionally or with reckless disregard, violated any term of the Contract with the Developer;

15.2.2 Committed an acts or omission which reflects on the Contractor's quality, fitness or capacity to perform Work for the Developer;

15.2.3 Committed an act or offense which indicates a lack of business integrity or business honesty; or,

15.2.4 Made or submitted a false claim against the Developer or any other public entity.

**15.3 HEARING AND PRESENTATION OF EVIDENCE**

If there is evidence that the Contractor may be subject to debarment, the Developer shall notify the Contractor in writing of the evidence which is the basis for the proposed debarment and shall advice the Contractor of the scheduled date for a debarment hearing before the Developer Board or its delegated designee.

The Developer Board, or designee, shall conduct a hearing where evidence on the proposed debarment is presented. The Contractor or the Contractor's representative shall be given an opportunity to submit evidence at the hearing. The Contractor shall be provided an adequate amount of time to prepare and object to evidence presented. A tentative proposed decision shall be issued as a tentative decision and the Developer shall be entitled to modify, deny or adopt the proposed decision. The proposed decision shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Developer shall be provided an opportunity to object to the tentative proposed decision for a period of 15 days. If additional evidence is presented, the Developer shall evaluate this evidence and either issue an amended ruling, issue the same ruling, or call a further hearing.

## **GENERAL CONDITIONS**

If a Contractor has been debarred for a period of longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The Developer may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the Developer.

The Developer will consider a request for review of a debarment determination only where: (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Developer will provide notice of the hearing on the request. At the hearing, the Developer shall review evidence on the proposed reduction of debarment period. This hearing shall be conducted and the request for review decided by the Developer pursuant to the same procedures as for a debarment hearing.

The Developer's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment.

The terms shall also apply to Subcontractors of Contractor.

## **SUPPLEMENTARY GENERAL CONDITIONS**

The following supplements modify the General Conditions. Where a portion of the General Conditions is modified and or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

### **LABOR CODE SECTION 1771.4**

If the Developer has entered into a collective bargaining agreement that binds all contractors and subcontractors performing work on this project that includes a mechanism for resolving disputes about the payment of wages, the requirements set forth in Labor Code section 1771.49(a) do not apply on this Project.

### **ARTICLE 3 – THE CONTRACTOR**

Article 3.10.4 Add the following: The Contractor shall require all Subcontractors to prepare and submit to the Contractor, within fifteen (15) days of execution of the Subcontract, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for the Contractor's or Architect's approval.

### **ARTICLE 8 – TIME**

Article 8 Schedule Inclusion Requirements –The Baseline Schedule shall include the following Milestone Schedule:

Article 8.2.2 Performance During Working Hours – delete this Article and replace with the following:

8.2.2 Where a single shift is worked, eight (8) consecutive hours between **8 am** and **4 pm** shall constitute a work day at the applicable prevailing wage rate(s).

Article 8.2.2 Performance During Working Hours – delete this Article and replace with the following:

8.2.2 Forty (40) hours between **Monday, 8am-4pm** and **Friday, 8am-4pm** shall constitute a work week at the applicable prevailing wage rate(s);

Article 8.4.1 Liquidated Damages – Contractor will be liable to the Developer for Liquidated Damages pursuant to Article 8.4 for each calendar day of delay in the amount set forth in the Agreement Form.

**SUPPLEMENTARY GENERAL CONDITIONS**

ARTICLE 11 – INSURANCE AND BONDS

Article 11.10 Performance and Payment Bonds – The number of executed copies of the Performance Bond and the Payment Bond required is three (3).



**SUPPLEMENTARY GENERAL CONDITIONS**

Division 1 Forms

**IMMEDIATE CONSTRUCTION CHANGE DIRECTIVE NO.**

PROJECT: \_\_\_\_\_

TO: \_\_\_\_\_

You are hereby directed to provide the extra work necessary to comply with this ICD.

DESCRIPTION OF CHANGE: \_\_\_\_\_

\_\_\_\_\_

COST (This cost shall not be exceeded): \_\_\_\_\_

TIME FOR COMPLETION: \_\_\_\_\_

NOTE:

Pursuant to Article 7.3.1.2 An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the Developer (and CM if there is a CM on the Project) and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Developer may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. CONTRACTOR SHALL PROCEED WITH WORK SET FORTH IN THIS ICD IMMEDIATELY UPON RECEIPT OR THE DEVELOPER MAY EITHER HOLD THE CONTRACTOR IN EITHER PARTIAL DEFAULT PURSUANT TO ARTICLE 2.2 OR TOTAL DEFAULT PURSUANT TO ARTICLE 14.

\_\_\_\_\_  
Architect

\_\_\_\_\_  
Developer

**SUPPLEMENTARY GENERAL CONDITIONS**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT: \_\_\_\_\_

TO: \_\_\_\_\_

As the Architect for the Project described above, the Project has reached Substantial Completion. Substantial Completion is not reached unless and until each of the following three (3) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 9.9 of the General Conditions); (2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; and (3) the Project is fit for occupancy and its intended use

I certify that the Project has reached Substantial Completion as defined above on the following date:  
\_\_\_\_\_.

\_\_\_\_\_  
Architect