

**Berkeley Unified School District
REQUEST FOR QUALIFICATIONS AND PROPOSALS
WORKFORCE HOUSING DEVELOPMENT
RFQ/P # 01-0321**

Berkeley Unified School District ("District") is seeking proposals from qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide planning, design, construction and operation of a workforce housing development to be located at 1701 San Pablo Avenue, Berkeley, CA 94702 ("Project"), as more fully defined in **Exhibit "A,"** in accordance with the provisions of the Teacher Housing Act of 2016, California Health and Safety Code section 53570 et seq., and all other applicable statutes and regulations.

The Request for Qualifications and Proposals ("RFQ/P"), which includes instructions for its completion, is enclosed for your consideration or may be downloaded from the District's website at www.berkeleyschools.net (use the "[purchasing](#)" link). According to the specifications contained in this RFQ/P, Respondents to this RFQ/P shall submit a completed Statement of Qualifications ("SOQ") along with the Proposal (collectively "RFQ/P Packet"). Respondents must mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy on a flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

John Calise, CSRM
Executive Director
Facilities Division
Berkeley Unified School District
1720 Oregon Street
Berkeley, CA. 94703
Workforce Housing Development RFQ/P # 01-0321

ALL RESPONSES ARE DUE BY 2:00 P.M. ON April 12, 2021. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

A mandatory information meeting will be conducted on **Thursday, March 11, 2021, at 1:30 pm.** The meeting will be held virtually through Zoom or another video-conferencing platform. Links to join meeting will be provided to all proposers.

Questions regarding this RFQ/P may be directed to John Calise at johncalise@berkeley.net and must be submitted on or by **2:00 P.M. on March 18, 2021.**

**Berkeley Unified School District
REQUEST FOR QUALIFICATIONS AND PROPOSALS
WORKFORCE HOUSING DEVELOPMENT**

I. INTRODUCTION

Berkeley Unified School District ("District") is responsible for educating more than 9,800 individual students in 11 public elementary schools, 3 middle schools, one comprehensive high school, and an alternative high school. The District also operates multiple preschools and an Adult School. The District employs more than 1,500 employees, including classified staff, certificated teachers and other administrative support ("District Workforce"). The Project, described in **Exhibit A**, is intended to provide much-needed affordable housing to the District's Workforce.

This Request for Qualifications and Proposals ("RFQ/P") defines the services sought from Respondents and generally outlines the Project requirements. The District is seeking Proposals for the Project described herein.

II. PROJECT DESCRIPTION AND SCOPE OF SERVICES

A. General

The purpose of this RFQ/P identify qualified persons, firms, partnerships, corporations, associations, or professional organizations to provide planning, design, construction and operation of a workforce housing development located at 1701 San Pablo Avenue, Berkeley, CA 94702 ("Project"), more fully defined in "**EXHIBIT A.**" The Project is intended to be occupied solely by District Workforce in accordance with the provisions of the Teacher Housing Act of 2016, California Health and Safety Code section 53570 et seq., and all other applicable statutes and regulations.

Selected developers shall have experience with the planning, designing, constructing and operating residential developments Specific experience with affordable housing projects is preferable. In addition, the District desires that prospective developers have experience within the City of Berkeley and/or the greater San Francisco Bay Area. To submit a proposal, Respondents must ensure that any proposed constructor team member is properly licensed by the California Contractors State License Board and registered with the Department of Industrial Relations ("DIR") as required by law. The selected developer will be required to comply with the Labor Code prevailing wage requirements and the District's bonding and insurance requirements. The selected developer shall be required to work cooperatively with District staff, the Governing Board, all other technical consultants, the architect, the project inspector, and any program and/or construction manager, if any, retained by the District for the Project, other District committees, and the community to timely and professionally complete the Project.

The Project is further defined in the attached **EXHIBIT A**, along with the District's proposed monetary contribution to the Project. Respondents' Proposal shall include Respondent's proposed fees to perform the Project, including the proposed fees to perform all planning and design services or any other work related to the Project, as requested by the District. Each Respondent must submit a budget for each scope of work as well as an overall cost if the Respondent is given all of the work.

The criteria on which the District makes its determination will be based on the District's adopted best value methodology and criteria provided in this RFQ/P. The District intends to select a Respondent(s) that best meet the District's Project objectives.

B. Scope of Work

Although the final scope of work will be negotiated in the executed Ground Lease Agreement (defined below at subparagraph D), the selected developer shall be responsible for performing the following scope of work which shall include, but not be limited to:

1. Obtain all required approvals, permits and entitlements from the City of Berkeley, the California Division of State Architect, and any other agency with jurisdiction, to design and construct the Project
2. Develop the design of scope, structural design, design documents as required, design coordination, vendor solicitation, sequencing, scheduling, budgets, including value engineering, and communication for the Project.
3. Report to the District on Project status on a regular basis throughout the course of the Project. Prepare and present status reports to the District, any committees, and the Board, as applicable.
4. Retain architects, construction managers, program managers, project inspectors, and other specialty technical consultants as needed. Coordinate work with sub consultants, such as soils and geotechnical consultants, environmental consultants, and other consultants not under the selected architect(s). Participate in planning workshops and all other required public hearings or meetings, as applicable.
5. Report to the District on a regular basis regarding communication with the City of Berkeley and any other agencies involved in the design and/or construction processes. Manage compliance with environmental and other regulatory requirements, as well as with applications for funding assistance from the City of Berkeley and any other grant or funding source available to the District or the selected developer for development of affordable housing.
6. Develop and maintain an overall cost and schedule reporting system for the Project.
7. Review the Project with the District to define and refine the Project scope with District staff and consultants. Sequence and schedule construction work for the Project with design architects, construction managers, project managers, and District staff.
8. Use standard accounting methods to tabulate, compile and check correctness of all expenditures associated with the Project.
9. Develop and implement an outreach program, with specific strategies to attract and increase participation of local, small, emerging and Disabled Veterans Business Enterprise ("DVBE") firms in the planning and construction of the Project.

10. Prepare periodic summaries of Project expenditures for District review. Maintain current status of all obligations, commitments, and expenses against the Project.
11. Submit necessary reports to federal, state and local authorities. Ensure that all other Project participants submit necessary documentation.
12. Coordinate and maintain schedules that document the sequence and time frame for the Project.
13. Work with District to develop criteria for residential occupancy by District Workforce, including compliance with any requirements set forth in the Teacher Housing Act and any conditions imposed by the City of Berkeley in connection with use of proceeds from the City's Measure O Affordable Housing Bond.
14. Provide ongoing property management services for the operation of the Project, including leasing residences, routine maintenance and upkeep of the Project, deferred and major maintenance and repair, and any other activities associated with operating a residential development.
15. Provide quarterly reports to the District summarizing occupancy levels and operational updates to ensure the District Workforce has full use of the Project.

C. Funding

The District intends for the Project to be funded, in part, through an apportionment from the City of Berkeley from its Measure O Bond, which Measure is intended to "ensure and preserve affordable housing for low-income households, working families and individuals, including *teachers . . .*" The amount of Measure O funding that may be available to fund the Project is approximately \$24,500,000. The District notes that at this time this funding contribution is tentative and is **not guaranteed**. The District expects to receive a more precise amount of the City's funding contribution in or around June 2021. The balance of the Project cost shall be borne by the selected developer. Accordingly, developers are encouraged to submit cost estimates that contemplate a budget including a contribution by the City of Berkeley and an alternate budget that does not include a City contribution. Other than dedication of the land for the Project, the District does not intend to provide any additional funding toward the cost of the Project.

D. Form of Agreement

Selected developer must be able to execute the District's form of Ground Lease, ("Agreement") which is attached to this RFQ/P as **EXHIBIT B**.

E. Indemnity

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

F. Insurance

The District requires at least the following insurance coverage, with complete insurance requirements more fully set forth in **EXHIBIT B** to this RFQ/P:

- Commercial General Liability Insurance, including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments
 - Each Occurrence \$2,000,000
 - General Aggregate \$4,000,000
- Automobile Liability Insurance
 - Combined Single Limit per Occurrence \$1,000,000
- Workers Compensation and Employer’s Liability Statutory Limit
- Builder’s Risk Replacement Cost
- Professional Liability Insurance
- Property Insurance

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

III. FULL OPPORTUNITY

The District hereby affirmatively ensures that Disadvantaged Business Enterprises (“DBE”), Small Local Business Enterprise (“SLBE”), Small Emerging Local Business Enterprise (“SELBE”) and Disabled Veterans Business Enterprise (“DVBE”) firms shall be afforded full opportunity to submit qualifications in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender, transgender status, political affiliation, or religion in any consideration leading to the award of contract. No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award.

IV. LIMITATIONS

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

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

V. RESTRICTIONS ON LOBBYING AND CONTACTS

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

VI. MANDATORY INFORMATIONAL MEETING

Each Respondent must attend the mandatory informational meeting, to be conducted on **March 11, 2021 at 1:30 P.M.** The meeting will be held virtually through Zoom or another video-conferencing platform. Links for the Mandatory Meeting will be provided to all developers who timely submit a proposal. At this mandatory meeting, District representatives will distribute information and materials to further describe the Project, the scope of work for the Project, and visit (virtually) the Project site. Respondents shall consider and address the materials and information distributed at the meeting in their RFQ/P Packets. Respondents that fail to attend the mandatory informational meeting, in its entirety, shall be ineligible for responding to this RFQ/P.

VII. SUBMITTAL FORMAT

A. Format

Material must be in 8½ x 11 inch format with font no less 11 font. The RFQ/P Packets shall include divider tabs labeled with boldface headers below (e.g. the first tab would be entitled "Executive Summary," the second tab would be entitled "Table of Contents," etc.) Five (5) bound copies, one (1) unbound copy, and one (1) electronic copy of the RFQ/P Packet shall be submitted.

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

- No divider sheets or tab
- Text printed on one side only (i.e., no back to back pages)
- Pages with proprietary information removed

- A cover sheet listing the firm's name, the total number of pages, and identification of those pages that were removed due to proprietary information

B. General Overview

Each RFQ/P Packet shall include a description of the type, technical experience, backgrounds, qualifications and expertise of the Respondent, and proposed Project team members. The description shall show that the firm and project team members possess the demonstrated skills and professional experience to perform the general functions of the Project and fulfill the goals and vision of the District as its developer for the Project. Submittals shall describe in detail the Respondent's methods and plan for carrying out the Project. Included in this information must be a detailed description of each phase of the Project, including the land use planning, design, construction and post-construction operation of the Project. Describe the Respondent's approach to the Project, including any creative methodology and/or technology that the Respondent uses or unique resources that the Respondent can offer to the District and Project.

C. Contents

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

1. **TAB 1 – Executive Summary**

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

2. **TAB 2 – Table of Contents**

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

3. **TAB 3 – Cover Letter Identifying Respondent**

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

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

- h) And, the following statement:
“[RESPONDENT’S NAME] received a copy of the District’s Ground Lease (“Agreement”) attached as **EXHIBIT B** to the RFQ/P.
- i) Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

4. **TAB 4 - Respondent Information**

- a) A brief history of the Respondent. Please include any former names of the Respondent and the number of years the Respondent has participated in developments similar to proposed Project.
- b) Organizational chart of the Respondent. This shall include the names of all key personnel, joint venture partners, and sub-consultants with their titles and specific task assignments for the Project. The District’s evaluation will consider the entire team. Therefore, no changes in the Respondent’s composition will be allowed without prior written approval by the District.
- c) A description of the Respondent and its organizational structure. Resumes of personnel to be involved with the Project should be included, including their residential planning, design, construction and operational experience. Upon engagement, any change in personnel must be approved by the District. Respondent shall be responsible for any additional costs incurred by a change in personnel.
- d) Provide description of Respondent’s technical competence, including a description of in-house resources (e.g. computer capabilities, software applications, modeling programs, etc.), and Respondent’s ability to draw upon multi-disciplinary staff to address the services required under the RFQ/P.
- e) Identify key persons who will be primarily responsible for working with the District and their respective roles and responsibilities. If Respondent is selected for an interview, the identified individuals must attend the interview and any required in-person presentations.
- f) Provide the volume of construction in dollars for each of the past three (3) years.
- g) Provide a statement regarding the Respondent’s availability and resources.
- h) Provide a statement on financial resources, bonding capacity and insurance coverage.

- i) Provide a claims statement: Submit a statement indicating any and all suits or claims in which the Respondent or its personnel instigated litigation regarding construction projects within the past five (5) years, and indicating any and all claims in which claims and/or litigation have been pursued against the Respondent. For each listed claim and/or litigation: state the issues in the claim and/or litigation, the status of the claim/litigation, the names of the parties involved, and the outcome, if any. This list should include pending/ongoing/unresolved claims and litigation.
- j) Contractor license numbers of proposed team members and whether license has been revoked or suspended in the last five (5) years. Either Respondent or one of the key members of the Respondent team must hold a General Building Contractor License (B License), which is current, valid and in good standing with the Contractor's State License Board. Provide the following for each license:
 - i. Exact name of license holder on file
 - ii. License Classification
 - iii. License Number
 - iv. Date Issued
 - v. Expiration Date
 - vi. Whether license has been suspended or revoked in the past five (5) years. If so, explain.
 - vii. Provide the same information for all subconsultants and subcontractors.
- k) Provide signatory status.
- l) Identify the location of nearest local office and main office, if different, to the Project site.
- m) Certificate(s) of Insurance identifying the firm's current insurance coverages.

5. **TAB 5 – Methods and Strategic Plan**

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

- a) The technical and managerial approach to the Respondent's partnership with the District. Take into account the District's goals for the Project and the general functions required. Respondent may identify additional necessary tasks and discuss these in its proposed method to accomplish the work.
- b) How Respondent plans to incorporate local subcontracting teams into the Project.
- c) How Respondent plans to incorporate construction means and methods into the Project.

- d) Estimate of Project costs related to fees, general conditions, insurance, supervision, and management of the construction portion of the scope of work, more specifically detailed in accordance with the breakdown and requirements of Section 8 below.
- e) Preliminary schedule for the project, with a narrative of the recommended building approach and specific milestones for design, City approval and construction.
- f) Narrative description of how Respondent will approach operating the residential Project (i.e., property management factors, including leasing protocol, maintenance and operation plans, etc.)

6. **TAB 6 – Prior Relevant Experience**

Description of the Respondent’s experience with respect to the areas of residential construction over the past five (5) years. Specifically, please provide a list of all residential planning, design and construction projects in California, which the Respondent has been involved with for the past five (5) years where the total project contracts exceeded fifteen million dollars (\$15,000,000) per project. Within that list:

- a) Identify all projects within the City of Berkeley and greater San Francisco Bay Area.
- b) Identify the project deliver method (e.g. design-build, design-bid-build, etc.) by which each project was constructed.
- c) Include a discussion of Respondent’s experience with working with the City of Berkeley on residential projects.
- d) Identify and include discussion of Respondent’s experience with projects involving affordable housing grants/funding and/or below market rate units.
- e) Identify and include discussion of Respondent’s experience with school project and in particular interactions with the Division of State Architect.

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

- a) Project’s name and description;
- b) Firm’s role;
- c) Award and completion dates;
- d) Project’s total value;
- e) Amount of fees received;
- f) Staffing, including Respondent’s team members, subcontractors and consultants;

- g) Relationship with owner/client;
- h) References: Provide a contact name, telephone number and email address for the owners and indicate which key personnel of Respondent worked on each project; and
- i) Discussion of claims, demands, and/or litigation arising from the project and involving the Respondent, and resolution of the same.
- j) Include examples of other similar project assignments on the part of the Respondent.

List projects Respondent has successfully completed that had some or all of the following obstacles, including the creative solutions from the Respondent on how these obstacles were overcome:

- a) A very aggressive schedule.
- b) Significant community involvement.
- c) Successful experience complying with a Mitigation Monitoring and Reporting Program ("MMRP").
- d) Be prepared to expand upon what you did to accommodate:
 - i. The complexity of the project;
 - ii. The needs of the clients;
 - iii. Minimizing inconvenience; and
 - iv. Maximizing safety.

7. **TAB 7 – Contracting History**

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

- a) Failure to enter into a contract or professional services agreement once selected.
- b) Withdrawal of a proposal or bid as a result of an error.
- c) Termination or failure to complete a contract.
- d) Debarment by any municipal, county, state, federal, or local agency.
- e) Involvement in litigation, arbitration, or mediation, whether concluded or ongoing.
- f) Conviction of the Respondent or its principals for violating any state or federal antitrust laws by bid or proposal rigging, collusion, or restrictive competition between bidders or proposers, or conviction of any other federal or state law related to bidding or performance of services.

- g) Knowing concealment of any deficiency in the performance of a prior contract.
- h) Falsification of information or submission of deceptive or fraudulent statement in connection with a contract.
- i) Willful disregard for applicable rules, laws, or regulations.

Failure to disclose information regarding any of the above may be deemed to indicate an unsatisfactory record of performance. Information regarding any of the above may be considered in determining the suitability of Respondent to perform the needed services. Accordingly, Respondent may describe mitigating factors as part of description of any of the above.

8. **TAB 8 – Pricing and Contingency**

Pricing will be evaluated based on the following, which should be contained in the Proposal:

- (1) Planning and design services cost and method of calculation, including fees relating to architectural and engineering services.
- (2) Respondent's construction/developer fee, which includes profit and overhead.
- (3) general conditions cost: list what is included in the Respondent's general conditions (including full-time and part-time personnel) and a monthly value of the general conditions. Indicate what would be included as a cost of work versus a line item in the general conditions;
- (4) Additional mark-up on subcontractor prices.
- (5) Construction contingency to be applied to errors and omissions.
- (6) Proposed timeline over which developer soft and hard construction costs will be recouped from operation of residential development.

After the Agreement is awarded, and the City of Berkeley approves the plans and specifications, the selected developer will be required to provide a comprehensive Price for constructing the Project ("Construction Price"). As part of the District review of the Construction Price, the District will expect to have access to all subcontractor bids, contingency breakdown and tracking documents, general conditions breakdown and tracking documents, and Respondent's fees. The Construction Price shall include all of Respondent's cost for labor, materials, equipment, overhead and profit, general conditions, contractor contingency, and allowances, if any. The Ground Lease will be amended to include the agreed upon Construction Price, if the District proceeds with the construction phase of the Project.

9. **TAB 9 – Insurance**

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

10. **TAB 10 – Assurances**

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

- **Planning and Design Services:** Respondent shall provide planning and design services that relate to the organization and development of the Project prior to the start of construction including the following:
 - **Site Evaluation:** Consult with District staff in relation to the existing site. Selected developer should make site visits, as needed, to review the current site conditions. During this evaluation, Respondent may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.
 - **Land Use Entitlement:** The selected developer will work directly with the City of Berkeley, and any other agency with jurisdiction over the project, to obtain all necessary land use and development approvals and permits.
 - **Plan Development:** Selected developer shall develop the construction plans and specifications for the Project.
 - **Design Committee:** As part of the development of the Project plans and specifications, the selected developer will convene and host design committee meetings to identify community concerns and District objectives. The design committee should include up to three (3) community members that reside or own businesses within a one-half mile radius of the Project site, as well as up to three (3) District representatives.
 - **Detailed Construction CPM Schedule:** Produce and update on an ongoing basis detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.
 - **Preliminary and Detailed Estimates:** Provide preliminary construction estimates using like-kind construction costs. Upon completion of the Project plans and specifications, provide detailed construction estimates showing the values of all major components of the Project.
 - **Construction Planning:** Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.
 - **Other services:** Any other services that are reasonable and necessary to control the budget and schedule. List those areas where subconsultants will be required and where the Respondent has in-house expertise. Provide resumes of persons providing each of these services and for key personnel assigned to the Project. Resumes may be provided as an appendix to Respondent’s SOQ and will not count toward the page limit.
- **Construction Services:**
 - **Project Accounting and Management:** Provide monthly updates on Project accounting and budget targets.

- **General Conditions:** List what is included in the Respondent’s general conditions (including full-time and part-time personnel) and a monthly value of the general conditions. Indicate what would be included as a cost of work versus a line item in the general conditions.
- **Management of Project:** Administer and coordinate on a daily basis the work of all trade contractors the successful Respondent hires to work on the Project. Enforce strict performance, scheduling, and notice requirements. Document the progress and costs of the Project. Report proactively on potential schedule impacts. Recommend potential solutions to schedule problems.
- **District Representative:** Collaborate with District representative(s) on key aspects of the construction process.
- **Property Management Services:**
 - **Leasing Services:** Selected developer, or its designee, shall provide all leasing services for the completed residential Project, including processing tenant applications, rent collection, eviction proceedings, etc. Because the intent of this Project is to provide District Workforce affordable housing opportunities, selected developer must coordinate with District on a process for identifying eligible District Workforce.
 - **Project Maintenance, Repair and Ongoing Operations:** Selected developer will be solely responsible for all maintenance, repair and ongoing operational obligations related to the Project.
 - **Reporting to the District:** Work orders, occupancy level, etc.

11. **TAB 11 – Comments to Form of Agreement**

Respondents must thoroughly review the Agreement attached to this RFQP as **EXHIBIT B** and confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District’s standard agreement. Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, or deleting existing provisions, or adding new provisions. Respondents must set forth a clear explanation of what modification would be sought and specific alternate language. If selected, Respondent will be precluded from negotiating changes that have not been identified in its RFQ/P Packet. The District will review, but is not obligated to accept, any proposed changes.

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VIII. SELECTION CRITERIA

A. Best Value Evaluation

The RFQ/P Packets will be evaluated based on the District's adopted criteria and rating system to determine the qualified Respondent(s) providing the best value to the District.

CRITERIA ITEM	DESCRIPTION	MAXIMUM POINTS
Price	Price	_40_ points
Technical Expertise	Technical Expertise and relevant experience with like-Projects	_25_ points
Regional Expertise	Experience in the City of Berkeley and/or Greater San Francisco Bay Area	_30_ points
Project Plan	Scope and comprehensiveness of approach to carrying out Proposed Project, including Project team composition.	_30_ points
Community Engagement	Experience managing community relations and engagement surrounding project sites.	_35_ points
Schedule	Project Schedule and Construction Completion Date	_20_ points
Staffing	Management and Staffing Approach	_35_ points
Property Management Experience	Ability/plan to operate the residential Project through the term of the Agreement	_35_ points
<u>TOTAL: MAXIMUM 250 POINTS</u>		

Based on these criteria and rating system, District staff assigns points to each proposer and calculates the percentage of points assigned for each criterion and for the total maximum points. The higher the percentage point, the higher the proposer is ranked, and the more it reflects the better combination of price and qualifications for the Project.

B. District Investigations

The District may perform investigations of proposing parties that extend beyond contacting the references identified in the Statements of Qualifications and/or Proposals.

C. Selection of Finalists

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

1. All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in RFQ/P.
2. District shall evaluate the qualifications of the Respondents based primarily upon the adopted criteria and evaluation methodology, and will assign a best value

score to each proposal. Once the evaluation is complete, all responsive proposals shall be ranked from the highest best value to the lowest best value to the District.

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

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

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

D. Interviews

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

Any comments or objections to the form of Agreement attached hereto as **EXHIBIT B** to this RFQ/P must be provided in writing before the interview as part of Tab 11, and may be the subject of inquiry at the interview. Any comments or objections to the form of Agreement not provided in writing before the interview will not be entertained by the District.

Following the interviews, it is expected that the selection committee will make recommendations to District staff regarding the candidates and awarding the contract. The criteria for these recommendations will include those identified above.

E. Final Determination and Award

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

The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFQ/P.

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

V. SUBMISSION GUIDELINES

Respondents to this RFQ/P should mail or deliver five (5) bound copies, one (1) unbound copy, and one (1) electronic copy on a flash drive of the RFQ/P Packet conforming to the requirements of this RFQ/P to:

John Calise, CSRM
Executive Director
Facilities Division
Berkeley Unified School District
1720 OREGON Street
Berkeley, CA. 94703
Workforce Housing Development RFQ/P # 01-0321

ALL RESPONSES ARE DUE BY 2:00 P.M. ON April 12, 2021. Oral, telegraphic, facsimile, telephone or email RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

Questions regarding this RFQ/P may be directed to John Calise at johncalise@berkeley.net, and must be submitted on or by **2:00 P.M. on March 18, 2021.**

Each submittal must conform and be responsive to the requirements set forth in this RFQ/P.

The District hereby notifies all Respondents that it will affirmatively insure that, in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit its response to this RFQ/P and no respondent will be discriminated against on the grounds of race, color, sex, age, ancestry, religion, marital status, national origin, medical condition or physical disability on consideration for the award.

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

RFQ/P SCHEDULE SUMMARY

DATE	ACTION ITEM
March 3, 2021	Release and advertisement of RFQ/P # 01-0321
March 11, 2021 at 1:30 P.M.	Mandatory Informational Meeting.
March 18, 2021 at 2:00 PM	Last day to receive written questions from Respondents.
March 26, 2021	Last day for District to issue addenda to answer questions/clarifications.
April 12, 2021 at 2:00 P.M.	Deadline for submissions in response to RFQ/P # 01-0321
Week of April 23, 2021	Release of shortlist qualified Respondents and interview notifications.
Week of April 26, 2021	Interviews of qualified Respondents.
May 19, 2021	Berkeley Unified School District Governing Board Meeting – Selection of Developer
May 21, 2021	Notice to selected developer.

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

EXHIBIT A
PROJECT DESCRIPTION AND FUNDING DESIGNATION

The District is the owner of that certain real property located at 1701 San Pablo Avenue, Berkeley, CA 94702, ("Project Site"). The Project Site is the location of the adult school and the structures located on the Project Site are currently used for the District's Adult Education program.

The Project will include planning, designing and constructing a new workforce housing residential development. It is the desire of the District for this project to be constructed in the Adult School Parking lot located at 1701 San Pablo Ave. in Berkeley, CA. Additionally, parking for the adult school must be constructed and the development must maximize the number of units for BUSD's educators which include the certificated and classified staff. The developer will be responsible to determine if this project will be subject to the building standards and specifications required by the Division of State Architect.

A feasibility analysis has been completed and can be found [here](#). The Project also includes the eventual operation and property management of the Project once construction is complete. The selected developer, as part of the Project planning, will work with the City of Berkeley to obtain the maximum housing density for the Project site.

Other than dedication of the real property for the Project Site, the District does not intend to fund any other costs associated with the Project. The District has, however, worked with the City of Berkeley to obtain proceeds from the City's Measure O Affordable Housing Bond. The District anticipates this contribution will be approximately \$24,500,000. As a result, the Project may also include certain conditions and/or restrictions associated with use of Measure O proceeds, which conditions will be incorporated into the Ground Lease. The District expects that the selected developer will provide all additional funding necessary to carry out the Project. The Developer will be responsible for submitting and servicing the Measure O Application to the City of Berkeley.

EXHIBIT B

FORM OF GROUND LEASE

(WORKFORCE HOUSING DEVELOPMENT)

By and between

**Berkeley Unified School District
and**

This Ground Lease ("Ground Lease"), dated _____ ("Effective Date"), is between the BERKELEY UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("District") as lessor and the _____, a _____ ("Lessee") as lessee. District and Lessee may be referred to in this Ground Lease individually as a "Party" or collectively as the "Parties."

RECITALS

A. District owns real property located at 1701 San Pablo Avenue, Berkeley, CA 94702 upon which parcels it operates adult education and district support facilities, such property legally described in **Exhibit A** attached hereto and incorporated herein by reference ("Property"); and

B. District desires to lease the Property for the purpose of constructing and operating a workforce housing development and appurtenant parking improvements which would serve District employees in accordance with the provisions of the Teacher Housing Act of 2016, California Health and Safety Code section 53570 et seq., and all other applicable statutes and regulations ("Project"); and

C. Lessee successfully proposed on the District's Request for Qualifications and Proposals # _____ for the Project, issued by the District on March ____, 2021 and awarded to Lessee on _____, 2021; and

D. The Parties desire to enter into this Ground Lease to outline the terms and conditions related to the planning, construction and operation of the Project.

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are acknowledged, the Parties agree as follows:

Lease. District hereby leases to Lessee and Lessee leases from District, the Property depicted on **Exhibit A**.

Term

Term. The term ("Term") of this Lease is for a period of ____ (__) years, commencing on the date Lessee executes a contract for the construction of the Project ("Commencement Date"), and ending on the date ____ (__) years after the Commencement Date ("Expiration Date") unless sooner terminated under the terms of this Ground Lease. Following the occurrence of

the Commencement Date and upon District's request, the Parties shall execute the Memorandum of Commencement Date (in the form attached as **Exhibit B**), confirming the Commencement Date and Expiration Date of the Term.

Extension of Term. At any time prior to the Expiration Date, the Parties may mutually agree to extend the Expiration Date by up to an additional ___ (___) years, subject to any laws then in effect.

Delay in Possession. If for any reason District cannot deliver possession of the Property to Lessee on the Commencement Date as provided in Section 2.1, District shall not be subject to any liability nor shall such failure affect the validity of this Ground Lease or the obligations of Lessee under it or extend the Term. However, Lessee shall not be obligated to pay rent or perform any other obligation until possession of the Property is tendered to Lessee. In the event the delivery of possession is delayed for more than six (6) months, Lessee shall have the option to terminate this Lease by written notice to District.

Consideration.

Consideration for the Ground Lease shall include the following:

Rent. Lessee shall pay District as annual rent for the Property the sum of One Dollar (\$1.00) ("Rent"). Lessee shall pay Rent for the first year on or before the Commencement Date and annually in advance on each anniversary of the Commencement Date for each subsequent year of the Term and each year of any extension.

Use

Permitted Use. Lessee shall use the Property solely for construction, improvement, operation and maintenance of a District workforce housing development located in whole or in part on the Property ("Project" or "Improvements"). The Project will be designed and constructed in accordance with applicable City of Berkeley building standards.

Priority Use. The Parties understand and agree that the housing units constructed as part of the Project shall be allocated based on the following priority: (1) District employees who meet the income specifications of the Teacher Housing Act; (2) other individuals that meet moderate income levels as specified in the City of Berkeley affordable housing guidelines; and (3) other individuals of any income level. Not later than sixty (60) days following the Commencement Date, the Parties shall formalize "Resident Priority Guidelines" to ensure compliance with this provision.

Operation of Housing Development in Compliance with Law. After construction of the Project and upon Lessee's receipt of a Certificate of Occupancy from the City of Berkeley, Lessee agrees to operate the Project in accordance with the provisions of the Ground Lease and in compliance with all valid and applicable laws, ordinances and regulations of all federal, state, county or local governmental agencies having jurisdiction over the operation of the residential developments, including but not limited to the Teacher Housing

Act of 2016, the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder, as amended from time to time ("ADA").

Project Construction and Operation

Funding

The Parties understand and agree that the Project may be funded in part through an apportionment from the City of Berkeley from its Measure O Bond, which Measure is intended to "ensure and preserve affordable housing for low-income households, working families and individuals, including *teachers . . .*" The amount of Measure O funding that may be available to fund the Project is approximately \$24,500,000 ("City Contribution"). The Parties further agree and acknowledge that at this time the City Contribution is tentative and is **not guaranteed**. The District expects to receive a more precise amount of the City's funding contribution in or around June 2021.

All costs associated with the Project, less any City Contribution, shall be borne solely by Lessee. Other than dedication of the Property for construction of the Project, the District shall not be obligated to provide any additional funding toward the cost of the Project

Lessee Obligations. Subject to the approvals required in this Section 5, Lessee shall be solely responsible for performing the following scope of work which shall include, but not be limited to:

Obtain all required approvals, permits and entitlements from the City of Berkeley, the California Division of State Architect, and any other agency with jurisdiction, to design and construct the Project

Develop the design of scope, structural design, design documents as required, design coordination, vendor solicitation, sequencing, scheduling, budgets, including value engineering, and communication for the Project.

Report to the District on Project status on a regular basis throughout the course of the Project. Prepare and present status reports to the District, any committees, and the Board, as applicable.

Retain architects, construction managers, program managers, project inspectors, and other specialty technical consultants as needed. Coordinate work with sub consultants, such as soils and geotechnical consultants, environmental consultants, and other consultants not under the selected architect(s). Participate in planning workshops and all other required public hearings or meetings, as applicable.

Report to the District on a regular basis regarding communication with the City of Berkeley and any other agencies involved in the design and/or construction processes. Manage compliance with environmental and other regulatory requirements, as well as with applications for funding assistance from the City of

Berkeley and any other grant or funding source available to the District or the selected developer for development of affordable housing.

Develop and maintain an overall cost and schedule reporting system for the Project.

Review the Project with the District to define and refine the Project scope with District staff and consultants. Sequence and schedule construction work for the Project with design architects, construction managers, project managers, and District staff.

Use standard accounting methods to tabulate, compile and check correctness of all expenditures associated with the Project.

Develop and implement an outreach program, with specific strategies to attract and increase participation of local, small, emerging and Disabled Veterans Business Enterprise ("DVBE") firms in the planning and construction of the Project.

Prepare periodic summaries of Project expenditures for District review. Maintain current status of all obligations, commitments, and expenses against the Project.

Submit necessary reports to federal, state and local authorities. Ensure that all other Project participants submit necessary documentation.

Coordinate and maintain schedules that document the sequence and time frame for the Project.

Work with District to develop criteria for residential occupancy by District Workforce, including compliance with any requirements set forth in the Teacher Housing Act and any conditions imposed by the City of Berkeley in connection with use of proceeds from the City's Measure O Affordable Housing Bond.

Provide ongoing property management services for the operation of the Project, including leasing residences, routine maintenance and upkeep of the Project, deferred and major maintenance and repair, and any other activities associated with operating a residential development.

Provide quarterly reports to the District summarizing occupancy levels and operational updates to ensure the District Workforce has full use of the Project.

District Approval. All architectural plans, site improvement plans, drawings, specifications and designs, including a timeline as set forth above ("Improvement Plans") shall be submitted to the District for approval, which approval shall not be unreasonably withheld, conditioned or delayed. District shall have _____ (__) business days to grant or withhold its approval. The Parties will meet and confer to resolve the concerns raised by the District, which shall be remedied in a fashion mutually agreed upon by the Parties. Upon

completion of the Project, Lessee shall provide to District a complete set of "as built" plans and all inspection records.

Timeline for Initial Construction. After obtaining all necessary permits and approvals of design plans, Lessee shall commence construction of the Project as soon as practically possible and shall accomplish the completion of the Improvements substantially in accordance with the construction schedule attached as part of the Improvement Plans, if such schedule is requested by District. District and Lessee acknowledge that there are often unforeseen delays in all construction projects. It is anticipated that construction of the Project will require [____ months] subject to weather, material supplies and other factors.

Subsequent Improvements. Subsequent improvements or alterations to the Property ("Subsequent Improvements") that impact the Property or alter or affect the interface of the Project are subject to District's prior approval. All Subsequent Improvements shall be done at Lessee's sole cost and expense, including the expense of design, permitting and construction.

Insurance During Construction. In addition to the coverage described in Section 7 hereof, the Lessee shall cause its general contractor(s) to provide all risk property coverage including builder's risk protection during the course of construction, covering the full replacement value of the Project. Builder's risk insurance shall include debris removal, fire, flood, and earth movement by value of risk at time of loss (VARTOL). The District shall all be named as Additional Insured on the Builder's Risk Policy by separate endorsement.

Construction Timetable, Notice. The District shall approve the phasing and scheduling included in the construction bid documents for all construction activities on the Property. Lessee will give District at least 30 days' notice of commencement of construction and a proposed timetable of commencement and completion of construction. Prior to commencement of construction,

Construction in Compliance with Laws All Improvements shall be constructed and all work on the Property shall be performed in accordance with all valid laws, ordinances and regulations of federal, state, county or local governmental agencies having jurisdiction over the Property, including but not limited to laws promulgated under the California Environmental Quality Act ("CEQA"), ADA requirements and DSA approvals. All work performed on the Property under this Ground Lease shall be done in a good and workmanlike manner.

Permits, Licenses and Approvals. Prior to the commencement of any construction on the Property, Lessee shall have determined all the requirements for, and shall have obtained, at its own expense, all necessary permits, licenses and other approvals required by applicable law, including CEQA approvals. On request, Lessee shall provide written verification to District that all required permits, licenses and approvals have been obtained prior to commencement of construction.

Access to Property for Construction. The District hereby grants Lessee and its employees, agents, and contractors the right to enter upon limited areas of the Property (including certain areas as agreed by the Parties

prior to commencement of construction) for the purpose of constructing Improvements on the Property during construction. The Parties will devise reasonable rules for the Lessee and its contractors regarding access to the Property and hours of operation for construction, taking into account the operations of the District on the Property. All access to and construction on the Property shall comply with applicable requirements of the California Education Code and the City of Berkeley Planning Division. Lessee shall construct the Improvements in a manner which minimizes adverse effects on the neighboring community. The indemnification and insurance provisions of this Ground Lease shall apply with respect to Lessee's construction and use of the Improvements, including any and all staging areas.

Mechanic's Liens/Stop Payment Notices. At all times during the term of the Ground Lease, Lessee shall keep the Property and Improvements free and clear of all liens and claims of liens for labor, services, materials, supplies or equipment performed on or furnished to the Property.

Payment Bond and Completion of Project. Contractors engaged by Lessee to perform construction services for the Project and any Subsequent Improvements requiring approval by District, including site preparation and demolition, shall furnish a payment bond as described below to Lessee and Lessee shall then provide evidence of the following bonding to District:

Payment Bond. A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to one hundred percent (100%) of the contract price payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

Completion of Project. Subject to Section 16.3 Force Majeure, if construction commences and is abandoned or is not completed within five (5) years after commencement, District, at District's sole discretion, may terminate this Ground Lease and require that Lessee, at its sole cost and expense, demolish the unfinished Improvements and return the Property to their original state prior to the Commencement Date; provided, however, that no such action shall be undertaken by District without prior written notice to Lessee and at least ninety (90) days opportunity to demonstrate material progress in completing the Project.

Ownership and Surrender

Ownership. During the Term and any extension, Lessee is the owner of the Improvements, both the Project and any Subsequent Improvements. Upon expiration or earlier termination of this Ground Lease, the Improvements shall, without compensation to Lessee, automatically and without any act of Lessee or any third party become District's property. Fixtures, furniture, personal property and equipment of the Lessee shall at no time be considered part of the Improvements and shall at all times remain the property of the Lessee but shall be removed by the Lessee, at its cost and expense, within a reasonable

time following the expiration or earlier termination of this Ground Lease.

Surrender. Lessee shall surrender possession of the Property and the Improvements at the expiration or earlier termination of this Ground Lease, free and clear of all liens and encumbrances, other than those, if any, consented to by District, in a clean and orderly condition. Lessee agrees to execute, acknowledge and deliver to District, at District's request, any instrument reasonably necessary to perfect District's right, title and interest in and to the Improvements and the Property

Removal/Demolition. If the Improvements do not meet the Minimum Remaining Useful Life Requirements (as defined below), then District may require Lessee to demolish all or certain specified and identifiable portions of such Improvements at the expiration or earlier termination of this Ground Lease. No such requirement shall be effective unless, not later than three hundred and sixty-five (365) days prior to the expiration of the Term then in effect, District delivers to Lessee a written statement that all or certain specified and identifiable portions of the Improvements be removed and/or demolished in accordance with the conditions of approval. In such event Lessee will, at its sole cost and expense, prior to the expiration or earlier termination of the Term or no later than one hundred eighty (180) days after expiration or earlier termination of the Term and pursuant to lawful government permits obtained by Lessee, remove and/or demolish such Improvements (including in such demolition removal of debris and rough grading of the portion(s) of the Property affected by such demolition) and to the extent practicable, and subject to Section 3.1.3, return the Property to their original state prior to the Commencement Date ("Restoration"). If the Ground Lease is terminated early, the process described above shall apply, except that District shall deliver the written statement to Lessee of which Improvements shall be removed and/or demolished, upon the early termination. As used in this Ground Lease, the term "Minimum Remaining Useful Life Requirements" means that the Improvements have an estimated Remaining Useful Life of at least ten (10) years from the end of the Term, as determined by a qualified independent consultant retained and paid for by District. "Remaining Useful Life" means: with respect to the Improvements, the number of years that the Improvements can continue to be used at full capacity for their intended purpose, assuming no repairs or rehabilitation other than repairs or rehabilitation that would customarily be performed to address ordinary wear and tear, taking into consideration all aspects of the physical condition of the Improvements, all applicable laws, and all other relevant factors.

Property Management As set forth in Section 5 above, Lessee shall be solely responsible for the operation, maintenance and repair of the Improvements and shall keep and maintain the Property and all Improvements in good order, condition, and repair and in compliance with all laws and regulations. It is further agreed that within ____ (___) days following the Commencement Date, the Parties shall meet, confer and develop guidelines for the operation and management of the Improvements, which shall be completed prior to completion of Construction of the Project.

Insurance Coverage

Commercial General Liability. Lessee shall maintain, at Lessee's sole expense, commercial general liability insurance, on an occurrence basis, insuring Lessee and its agents, employees, guests, patrons and independent contractors against all bodily injury, property damage, personal injury and other covered loss arising out of the use, occupancy, improvement and maintenance of the Property and the Improvements operated by Lessee, or any other occupant, on the Property. Such insurance shall have a minimum combined single limit of liability per occurrence of not less than \$2,000,000.00 and a general aggregate limit of \$4,000,000.00. The amounts of such insurance may be increased from time to time as District may reasonably determine. Such insurance shall: (i) name Berkeley Unified School District, its employees, Board members, officers, agents, and volunteers as additional insureds; (ii) include a broad form contractual liability endorsement insuring Lessee's indemnity obligations under Section 8; (iii) provide that it is primary coverage and noncontributing with any insurance maintained by District, which shall be excess insurance with respect only to losses arising out of Lessee's negligence; and (iv) provide for severability of interests or include a cross-liability endorsement, such that an act or omission of an insured shall not reduce or avoid coverage of other insureds.

"All Risk" Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole expense, "all risk" insurance against all personal property, including trade fixtures, equipment and merchandise of Lessee, in an amount equal to the full replacement value.

Workers Compensation Insurance. At all times during the term of this Lease, Lessee shall maintain workers' compensation insurance in accordance with state law, and employers' liability insurance with limits typical for companies similar to Lessee.

Requirements for Insurance Policies. All of the policies of insurance referred to in this Section 7 shall be written by companies authorized to do business in California and rated A+ VII or better in Best's Insurance Guide. Each insurer referred to in this Section shall agree, by endorsement on the applicable policy or by independent instrument furnished to District, that it will give District at least ten (10) days' prior written notice by registered mail before the applicable policy is cancelled for non-payment of premium, and thirty (30) days' prior written notice by registered mail before the applicable policy is cancelled or altered in coverage, scope, amount or other material term for any other reason (although any failure of an insurer to give notice as provided herein shall not be a breach of this Lease by Lessee). No

policy shall provide for a deductible amount in excess of \$100,000, unless approved in advance in writing by District. Lessee shall deliver to District copies of the insurance policies required to be carried by Lessee, certified by the insurer, or certificates evidencing such insurance policies, issued by the insurer, together with evidence of payment of the required premiums, prior to the required date for commencement of such coverage. At least thirty (30) days prior to expiration of any such policy, Lessee shall deliver to District a certificate evidencing renewal, or a certified copy of a new policy or certificate evidencing the same, together with evidence of payment of the required premiums. If Lessee fails to provide to District any such policy or certificate by the required date for commencement of coverage, or within fifteen (15) days prior to expiration of any policy, or to pay the premiums when required, District shall have the right, but not the obligation, to procure said insurance and pay the premiums. Any premiums so paid by District shall be repaid by Lessee to District with the next due installment of Rent, and failure to repay the same shall have the same consequences as failure to pay any installment of Rent.

Additional Insured Requirements. Lessee shall require and verify that all contractors, service providers, and other parties hired to perform work on the Project and maintain coverage at least as broad as specified in this Agreement to the extent those requirements apply to the scope of the contractor's work, with the same Certificate of Insurance requirements and naming as additional insureds all Parties to this Agreement.

Notification. Lessee shall immediately notify the District of any claim or litigation that may result in liability to the other Party.

Indemnification

Indemnity by Lessee. During the Term of the Ground Lease and except to the extent caused by the gross negligence or willful misconduct of District or District Parties, Lessee shall indemnify and hold District and District Parties harmless from and against any and all claims, demands, fines, judgments, awards, mechanics' liens or other liens, losses, damages, expenses, charges or costs of any kind or character (including actual attorney's fees and court costs) (collectively, "Claims") related to this Ground Lease and arising from (a) labor disputes involving Lessee or its contractors and agents, (b) the design, construction, repair, alteration, use, occupancy or enjoyment of the Property and Improvements, (c) from the conduct of Lessee's business or from any activity, work or thing done, permitted or suffered by Lessee in or about the Property, including the Improvements, or (d) any negligence of Lessee or any of Lessee's agents, contractors or employees. Lessee shall further indemnify and hold District harmless from and against any and all Claims arising from any breach or default in the performance of any obligation of Lessee under this Ground Lease and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such Claim or any resulting action or proceeding. If any action or proceeding is brought against District by reason of any such Claim, Lessee, upon notice from District, shall defend the same at Lessee's expense.

Lessee's Personal Property. District shall not be liable to Lessee and Lessee assumes all risk of damage to any fixtures, goods, inventory, merchandise, equipment, records, research, computer hardware and software, leasehold improvements, and other personal property of any nature whatsoever, and District shall not be liable for injury to Lessee's business or any loss of income related to such damage, unless caused by District's or District Parties' use of the Improvements or District's or District Parties' willful misconduct or gross negligence.

Utilities and Taxes

Utilities. At all times during the term of this Ground Lease, Lessee shall, in its own name, contract for and pay the expenses of all utility services supplied to the Property, including but not limited to all telephone, internet connections, electricity, gas, air conditioning, heating, trash, water and sewer units.

Payment of Taxes. During the term of this Ground Lease, Lessee shall pay any and all real or personal property taxes levied or assessed by any governmental agency or entity on any Improvements or personal property located on the Property, and the leasehold estate created by this Ground Lease. Lessee shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law.

Hazardous Materials

Compliance. During the term of this Ground Lease and at its sole cost, Lessee shall comply with all laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, transportation, discharge, release and disposal of Hazardous Material (as defined below) in or about the Property or the Improvements. All manifests for disposal of any hazardous materials removed from the Property shall be signed by an authorized representative of the District. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property or the Improvements in a manner or for a purpose prohibited by any federal, state or local agency or authority.

Notice. Lessee shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Material onto or within the Property or the Improvements, including the soils and subsurface waters thereof, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom.

Indemnification. In addition to Section 8.1 above, Lessee further agrees to indemnify District against, and to protect, defend, and save it harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), which result from Lessee's receipt, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Property or the Improvements. District shall be responsible for and shall indemnify, protect, defend and hold harmless Lessee on the same

basis as above for any Claims which result from District's receipt, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Material in, upon or about the Property.

Survive Termination. Lessee's and District's obligations under this Section 10 shall survive the termination the Ground Lease.

Definition of Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903), or (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

Defaults.

Event of Default. Failure to cure a breach of any obligation under this Ground Lease, where such failure continues after written notice to the defaulting party and after a thirty (30) day opportunity to cure, shall constitute a default ("Default"); provided, however, that if the nature of the breach is such that more than thirty (30) days are reasonably required to cure the breach, then the defaulting party shall not be deemed to be in default if it commences such cure within the thirty (30) day period and thereafter diligently and in good faith continues to cure the breach. Notice as provided for herein shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure section 1161. The occurrence of any one or more of the following events, subject to the notice and cure procedures stated previously, shall constitute a Default:

Failure to Pay Rent or Other Money. Failure to pay when due any rent, monies or charges required by this Ground Lease.

Failure to Act. Failure to do any act, other than the payment of rent, monies or charges required by this Ground Lease.

Prohibited Act. Causing, permitting or suffering to be done any act (i) required by this Ground Lease to have prior written consent, unless such consent is obtained, or (ii) prohibited by this Ground Lease.

Remedies

Intention. It is the intention of both Parties to work together to find a remedy to any and all disputes. Therefore, the Parties agree that termination and/or legal action shall be the remedy of last resort. In the event of a dispute both Parties agree to meet and work in good faith to find a remedy that preserves this Ground Lease. In the event that a remedy cannot be found, the following actions may be taken.

Termination. In the event of a default by a Party, and without limiting the non-defaulting Party in the exercise of any additional right or remedy which the non-defaulting Party may have, the non-defaulting Party shall be entitled to terminate this Ground Lease by delivering written notice of such termination to the defaulting Party. Within three hundred and sixty-five (365) days of Lessee's receipt of the notice of termination, Lessee shall surrender possession of the Property and Improvements to District pursuant to Section 5 above. Lessee may remove such personal property from the Property as can be removed without damage to the Improvements. Any property not removed by Lessee shall become the property of District.

Additional Remedies. Either Party may seek any additional remedies available at law or equity in addition to termination of the Ground Lease, including but not limited to injunctive relief and damages.

Assignment. Lessee shall not assign or transfer this Ground Lease without the prior written consent of District in each instance, which shall not be unreasonably withheld.

Notices. Notice to either Party shall be in writing, addressed to the Party to be notified at the address specified on the signature pages of this Ground Lease, and either (i) personally delivered, (ii) sent by an overnight courier service such as Federal Express, (iii) sent by first-class mail, registered or certified mail, postage prepaid, return receipt requested, or (iv) sent by facsimile or electronic mail. Any such notice shall be deemed received: (i) on the date of receipt if personally delivered; (ii) on the date of receipt as evidenced by the receipt provided by an overnight courier service, if sent by courier; (iii) three (3) business days after deposit in the U.S. Mail, if sent by mail; or (iv) on the date faxed or e-mailed as evidenced by the dated transmittal.

Rules and Regulations. Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which the Parties may make from time to time for the management, safety, care and cleanliness of the Property and the surrounding areas.

Miscellaneous

Time of Essence. Time is of the essence with respect to the performance of every provision of this Ground Lease in which time of performance is a factor.

No Agency. Nothing in this Ground Lease or in the relationship between District and Lessee shall be deemed or construed to create or constitute an agency relationship.

Amendments. This Ground Lease contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or

understanding pertaining to any such matter shall be effective. This Ground Lease may be modified only in a writing signed by the Parties.

Severability. The invalidity of any provision of this Ground Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof and it shall remain in full force and effect.

Covenants and Conditions. Each provision of this Ground Lease to be performed by Lessee shall be deemed both a covenant and a condition.

Governing Law. This Ground Lease shall be governed by the laws of the State of California.

Successors and Assigns. Each of the covenants, conditions, and agreements contained in this Ground Lease shall inure to the benefit of and shall apply to and be binding upon the Parties and their respective administrators, successors, assigns, or any person who may come into possession of the Property, the Property, the Improvements or any part thereof. Nothing contained in this Section 17.7 shall in any way alter the provisions regarding assignment or subleasing provided in this Ground Lease.

Authority. Each individual executing this Ground Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Ground Lease on behalf of that entity.

Effective Date. This Ground Lease, when executed by the Parties and delivered to District, must be approved by the District's governing board ("Board") prior to its effectiveness. The effective date of this Ground Lease ("Effective Date") shall be the date when this Ground Lease has been executed by the Parties and approved by the governing body of each Party.

Recording. The Parties shall cooperate in the execution and recording of any and all further documents required by this Ground Lease. Either Party may request a duly executed memorandum of ground lease or any extension thereof, in a form suitable for recording by which both Parties consent to such recordation. In the event of an early termination of the Ground Lease, a duly executed notice of termination or quit claim may be recorded.

Construction of Language. As used in this Ground Lease, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so indicates. This Ground Lease shall be construed in accordance with its fair meaning, the captions being for the convenience of the Parties only and not intended to describe or define the provisions in the portions of the Ground Lease to which they pertain. The terms of this Ground Lease have been freely negotiated by the Parties and this Ground Lease shall not be construed for or against the drafter.

Accessibility inspection Disclosure. Pursuant to California Civil Code Section 1938, District hereby advises Lessee that District has not had the Property inspected by a Certified Access Specialist.

Force Majeure. If Lessee or District is prevented or delayed from performing any act or discharging any obligation under this Ground Lease, except for the payment of Rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, pandemics, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Ground Lease or the Lessee's operation of the Property, or any other casualties beyond the reasonable control of either party ("Force Majeure"), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay.

Damage or Destruction. If at any time after the Commencement Date and during the Term, all or any part of the Improvements are damaged or destroyed by fire or other casualty ("Casualty"), Lessee may either (1) repair, restore, and reconstruct the Improvements, in Lessee's sole expense, to substantially the same condition that existed immediately prior to the Casualty (subject to any changes necessary to comply with then applicable laws) or (2) terminate the Ground Lease by a written notice delivered to District within ninety (90) of the Casualty. If the Lessee elects to terminate the Ground Lease, the Ground Lease shall terminate upon Lessee's completion of the Restoration (as such term is defined herein).

Condemnation.

A. **Termination for Total Condemnation.** If all of the Property is taken under eminent domain or inverse condemnation (collectively, "Condemnation") by a party other than District, or, if less than all of the Property is taken under Condemnation, and Lessee reasonably determines the remainder of the Property not taken is unsuitable for the purposes permitted by the Ground Lease, then Lessee may terminate this Lease as of the date of the taking by delivery of written notice of the election within twenty (20) days after the party has been notified of the taking or, in the absence of written notice, within twenty (20) days after the taking.

B. **Continuation of Ground Lease After Partial Taking.** If a partial taking of the Property occurs and this Lease is not terminated by Lessee under Section 16.15(A), this Ground Lease shall remain in full force and effect as to any portion of the Property remaining, and: (1) this Ground Lease will no longer be in effect as of the date of the taking for the portion of the Property taken by the public entity; (2) the Condemnation proceeds shall be allocated and disbursed in accordance with Section 16.15(C); (3) at its sole expense, but provided that the Condemnation award proceeds are sufficient to cover costs of restoration, Lessee shall restore the remaining portion of the Property to create suitable space for the purposes permitted by the Ground Lease. Notwithstanding anything to the contrary contained herein, if, in Lessee's reasonable judgment, the Condemnation award proceeds are not sufficient to cover the costs of restoration, then Lessee may elect to terminate the Ground Lease and the Condemnation proceeds shall be disbursed as provided in Section 16.15(C)(ii).

C. **Condemnation Awards.**

i. **Total Condemnation.** In the event of a total Condemnation, the Condemnation proceeds, after payment of the costs of the Condemnation proceedings for Lessee and District, shall be allocated as follows: First, Lessee shall receive the value of Lessee's interest in the Ground Lease and the leasehold estate (including, but not limited to, the ownership and exclusive title to the Improvements during the Term) ("Lessee's Leasehold Interest"). Second, District shall receive the remainder of the award.

ii. **Partial Condemnation.** In the event of a partial Condemnation, the Condemnation proceeds, after payment of the costs of the Condemnation proceedings, shall be applied first to restoration of the Improvements and Property in accordance with Section 16.15(B). After Lessee has completed the restoration, any remaining Condemnation award proceeds shall be paid first to Lessee in an amount equal to the value of the Lessee's Leasehold Interest taken, and then to District.

Exhibits. The following exhibits are included within this Ground Lease as thought fully set forth herein:

Exhibit A – Legal Description of Property
Exhibit B –
Memorandum of Commencement Date

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

DISTRICT

LA MESA-SPRING VALLEY SCHOOL DISTRICT

Dated: _____

By: _____

David Feliciano
Superintendent
4750 Date Avenue
La Mesa, CA 91942
Tel: (619) 668-5700 x6383
Email: david.feliciano@lmsvschools.org

Approved as to form:

Dated: _____

By: _____

Janet L. Mueller
Dannis Woliver Kelley

LESSEE

Dated: _____

By: _____

[Name]
[Title]
Tel:
Email:

Approved as to form:

Dated: _____

By: _____

EXHIBIT A

Description of Property

A complete description of the property can be located in the linked BUSD Housing Report which can be located [here](#).

EXHIBIT B

Memorandum of Commencement Date