

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

20-562

SAP Number

### Real Estate Services Department

<b>Department Contract Representative</b>	Terry W. Thompson, Director
<b>Telephone Number</b>	(909) 387-5252
<b>Contractor</b>	High Desert Partnership in Academic Excellence Foundation, Inc.
<b>Contractor Representative</b>	Kevin Porter, Chairman
<b>Telephone Number</b>	
<b>Contract Term</b>	4/30/2020-10/31/2021
<b>Original Contract Amount</b>	\$0
<b>Amendment Amount</b>	\$0
<b>Total Contract Amount</b>	\$0
<b>Cost Center</b>	
<b>GRC/PROJ/JOB No.</b>	
<b>Internal Order No.</b>	

**Briefly describe the general nature of the contract:**

Improvement Agreement between the County of San Bernardino and The High Desert 'Partnership in Academic Excellence' Foundation, Inc., as developer, for developer to construct, at developer's cost, a new preschool facility for the County on approximately 2.23 acres of land jointly owned by the County of San Bernardino and the City of San Bernardino at 205 Allen Street in San Bernardino as tenant's consideration for the initial 50-year term of the Ground Lease Agreement, contingent on developer obtaining construction financing within six months of the full execution of the improvement agreement.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

▶ SEE SIGNATURE PAGE  
Robert F. Messinger,  
Principal Assistant County Counsel

▶ \_\_\_\_\_  
\_\_\_\_\_

▶ \_\_\_\_\_  
Jim Miller, Real Property Manager, RESD

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## **IMPROVEMENT AGREEMENT**

This Improvement Agreement (this "Agreement") is entered into by and between the County of San Bernardino ("County") and the High Desert Partnership in Academic Excellence Foundation, Inc., a California Nonprofit Public Benefit Corporation ("Developer"). County and Developer are the "Parties" to this Agreement. This Agreement shall take effect on the date that the last of the Parties executes this Agreement (the "Effective Date").

### **RECITALS**

**A.** County and the City of San Bernardino ("City") are the owners of that certain real property described as Parcel 2 on Exhibit "A" attached hereto and known as 205 S. Allen Street, San Bernardino, California, comprising approximately 2.23 acres (the "Head Start Parcel"). County and City intend for County to operate a preschool under state preschool and federal "Head Start" programs on the Head Start Parcel for the benefit of the community. City, in its capacity as a co-owner of the Head Start Parcel, desires to consent to this Agreement between the County and Developer. For avoidance of doubt, all references to City and County in this Agreement refer to its respective capacities as the co-owners of the Head Start Parcel and nothing in this Agreement precludes or shall be interpreted to preclude City or County from acting in its respective capacities as a regulatory body with jurisdiction over the Head Start Parcel.

**B.** City and County are the owners of that certain real property known as 230 S. Waterman Avenue, San Bernardino, California, comprising approximately 15.63 acres (the "Charter School Parcel") located adjacent to the Head Start Parcel. Developer's affiliate, 230 South Waterman Avenue, LLC ("Developer Affiliate"), entered into that certain ground lease agreement with the City and County of even date herewith (the "Ground Lease"), wherein Developer Affiliate leases from the City and the County the Charter School Parcel with the intent that Developer Affiliate sublease the Charter School Parcel to Developer for Developer to operate a charter school known as the Norton Science and Language Academy under a charter granted by the San Bernardino County Board of Education thereon.

**C.** Pursuant to the Ground Lease, as consideration for the lease of the Charter School Parcel to Developer Affiliate and in lieu of Developer Affiliate's payment of monthly rent for the duration of the initial term of the Ground Lease, Developer Affiliate is required to construct a new preschool facility and site improvements for County on the Head Start Parcel in accordance with construction drawings agreed between the Parties and applicable laws. Through this Agreement, and subject to Section 1, Paragraph K, Developer intends to perform the foregoing obligations in the Ground Lease on behalf of Developer Affiliate, provided that Developer acknowledges and agrees that it has no right whatsoever to encumber either the Head Start Parcel or the Preschool Improvements whether for any financing obtained by the Developer or the Developer Affiliate to construct the Preschool Improvements on the Head Start Parcel or otherwise.

## AGREEMENT

The Parties now desire to enter into this Agreement on the terms and conditions set forth herein. The foregoing recitals are incorporated into and made a part of this Agreement.

**1. Construction of Preschool Improvements; Approved Construction Drawings.** Developer shall construct or have constructed at its sole cost, expense, and liability the following improvements for the County on the Head Start Parcel: (i) a preschool building, (ii) a playground area, (iii) a parking area, and (iv) site improvements, including but not limited to fencing, gates, exterior lighting, grading, roads, paving, curbs and gutters, utilities, drainage facilities, landscaping, and all other required facilities and improvements (subparagraphs (i) through (iv) collectively, the "Preschool Improvements") in accordance with the plans and specifications detailed in the floor plan, site plan, and plans for elevation, landscape and irrigation, architectural, structural, foundation, roof (Factory Mutual Class 1-90 roof), mechanical, heating, ventilation, and air-conditioning, plumbing, electrical, fire protection, and other plans, specifications, and documents, as collectively set forth or referenced in the Head Start Facility Bid Issue prepared by TSK Architects dated February 11, 2020 ("February 2020 TSK Bid Set"), as updated by the Modified Specifications to the Preschool Improvements dated April 10, 2020, as shown on Exhibit "B" attached hereto ("Modified Specifications"), which February 2020 TSK Bid Set and Modified Specifications have been approved by the Parties as of the Effective Date (unless individually referred to, the February 2020 TSK Bid Set and the Modified Specifications are collectively referred to as the "Approved Construction Drawings"). In the event of any conflict between: (i) the February 2020 TSK Bid Set and the Modified Specifications, the Modified Specifications shall control; and (ii) the Approved Construction Drawings and this Agreement, this Agreement shall control.

**A. Construction Materials.** Developer shall, at no cost, expense or liability to County, provide all equipment, tools, materials, labor, tests, design work, engineering services, and construction services necessary to fully and adequately complete the Preschool Improvements in accordance with this Agreement.

**B. Permits; Compliance with Laws; Public Bidding.** Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses from all relevant federal, state, and local governmental or regulatory authorities (collectively, "Governmental Authorities") to construct the Preschool Improvement in accordance with the Approved Construction Drawings, Applicable Laws, and this Agreement. Developer shall give all necessary and incidental notices required for the lawful construction of the Preschool Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. The Preschool Improvements shall be completed in accordance with the Approved Construction Drawings, as well as all applicable federal, state, and local statutes, laws, ordinances, regulations, codes, rules, standards, and other requirements, including but not limited to the California Building Code, Title 22 of the California Code of Regulations, and the requirements of the

California Department of Social Services Community Care Licensing Division (“Applicable Laws”). At all times during construction of the Preschool Improvements, Developer shall comply with the applicable provisions of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1170 *et seq.* regarding general prevailing wages, including, but not limited to, the provisions set forth in Exhibit “C” hereto, Prevailing Wage Requirements. Developer shall indemnify, defend (with counsel reasonably approved by County) and hold harmless County and City and their respective officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of Developer’s failure to fulfill its obligations set forth in Paragraph B of this Section 1. Developer’s indemnity obligation shall survive the completion of the Preschool Improvements and expiration or earlier termination of this Agreement and shall not be limited by the existence or availability of insurance. All approvals required by County in Paragraph B of this Section 1 shall be granted or denied in County’s sole discretion.

**C. Manner of Construction; Change Orders; Early Access.**

Developer shall construct the Preschool Improvements in accordance with the Approved Construction Drawings, the grading and building permits issued by the applicable Governmental Authorities, Applicable Laws, and this Agreement. From and after the Effective Date of this Agreement, Developer shall not modify the Approved Construction Drawings nor the Preschool Improvements without obtaining the prior written consent of the County’s Director of the Real Estate Services Department. In the event either Developer or County desire to make any modifications, for each modification, the Party desiring the modification shall, prior to commencing any work, submit a written request to the other party setting forth the details of the desired modification. Developer shall then provide any cost and scheduling impacts for the desired modification. If the Parties agree to the desired modification, for each modification, the authorized agent of the Parties shall execute a written change order detailing the specifications for the modification, any scheduling impacts, and which party is responsible for any cost impacts (each an “Approved Change Order”) and the Developer shall complete the agreed modification. Each Approved Change Order shall become part of the “Approved Construction Drawing” at the time the Parties execute the written change order. Either the County’s Chief Executive Officer or the County’s Director of the Real Estate Services Department shall be the authorized agent to execute change orders on behalf of the County. County shall have no liability for any modifications to the Approved Construction Drawings nor the Preschool Improvements made without an Approved Change Order and Developer shall be solely responsible for the cost and delays incurred by Developer to conform the Preschool Improvements to the Approved Construction Drawings. During construction of the Preschool Improvements, Developer shall permit County to have early access to the Preschool Improvements at no cost and at any time prior to the Delivery Date for the purpose of County or its representatives installing communications equipment, modular furniture, Developer-provided shelving in lieu of casework, alarms and such other items that County may reasonably desire. County shall exercise its early access rights at a time and in a manner that will not unreasonably interfere with Developer’s construction of the Preschool Improvements and any such early access shall not affect the Delivery Date or Outside Delivery date nor be deemed to be County’s acceptance.

**D. Utility Installations.** Developer shall, at its sole cost, expense, and liability, install permanent lines and connections for all electric, natural gas, water, and other utilities at the Head Start Parcel pursuant to the Approved Construction Drawings and extend said utility lines serving the Preschool Improvements to County-approved points on the Head Start Parcel, as shown in the Approved Construction Drawings. If approved in writing by County and shown in the Approved Construction Drawings, Developer may also install such distribution panels and equipment, meters and other facilities and equipment along with said utilities lines as may be reasonably required to connect to the utilities serving the Charter School Parcel, provided that any utilities that serve the Charter School Parcel shall be separately metered from the Head Start Parcel. Developer agrees that all utility installations ("Utility Installations") shall be constructed in accordance with provisions of this paragraph and that Developer shall pay all costs associated with such Utility Installations, including but not limited to the extension and connection of said utilities. Neither City nor County shall be required to reimburse Developer for the cost of any of the foregoing work.

**E. Construction Standards.** All construction of the Preschool Improvements will be carried out and completed by Developer in strict compliance with the Approved Construction Drawings, Applicable Laws, and this Agreement. Developer is solely liable for the construction of the Preschool Improvements. Developer is solely responsible for filing plans with the applicable Building and Safety Department, and any other applicable governmental entity, paying applicable fees and securing appropriate inspection(s). All stockpiling of excavated material, construction screening and the storage of materials, tools or equipment shall be to the satisfaction of the County and the applicable Governmental Authorities. Developer agrees that the Preschool Improvements will be constructed in a diligent and workmanlike manner in compliance with the Approved Construction Drawing, Applicable Laws, and this Agreement. Developer shall provide County with not less than ten (10) days' written notice prior to the commencement of construction of the Preschool Improvements so that County, at the option of County, may post a Notice of Non-Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be reasonably acceptable to County, as evidenced by County's written approval from the County's Director of the Real Estate Services Department. Developer shall require the contractor selected for the construction of the Preschool Improvements to execute the Certificate regarding Workers Compensation in the form attached as Exhibit "D" hereto and to provide County with certificates of insurance from its contractors evidencing that the insurances requirements of this Agreement are maintained by said contractors and require that the contractors provide the City and the County the same indemnity as required by Developer under this Agreement. Developer shall indemnify, defend (with counsel reasonably approved by County) and hold harmless City and County and their respective officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of Developer's failure to fulfill its obligations set forth in this Paragraph E of this Section 1. Developer's indemnity obligation shall survive completion of the Preschool Improvements and the expiration or earlier termination of this Agreement and shall not be limited by the existence or availability of insurance.

**F. Construction Management.** County agrees to designate one or more representative(s), at no cost to Developer, who will have the right to access the Head Start Parcel and the construction work during the construction process for purposes of coordinating construction with government inspectors and observe, monitor, and inspect the construction of the Preschool Improvements and review all documents and files related thereto, including but not limited to any tests and inspection reports, provided that nothing herein contained shall be construed as creating an obligation upon COUNTY to observe, monitor, inspect, or review and it is Developer's obligation to insure that the Preschool Improvements are completed in compliance with this Agreement. Upon completion, files and records for the Preschool Improvements shall be maintain for a minimum of five (5) years and the County shall have the right to review, audit, and copy such files and records. Developer understands that this representative's or representatives' presence on the Head Start Parcel in no way constitutes approval of the Preschool Improvements being constructed. Developer must, at the commencement of the construction work, notify the County in writing of the identity, place of business, and telephone number of Developer's on-the-job construction superintendent. Said construction superintendent will be Developer's prime consultant for purposes of communications with the designated representative of the County and government inspectors. Developer shall, prior to the commencement of construction of the Preschool Improvements on the Head Start Parcel, install adequate signage on the Head Start Parcel identifying Developer's contractor as the operator of the construction site to manage site operations and traffic flow, which sign shall also provide a Developer contact (with phone number) to call in case of emergency. The foregoing signage must be approved by County prior to installation.

**G. Preschool Construction Timeline.** Subject to Section 1, Paragraph K below, Developer and County agree that the Preschool Improvements must be completed by Developer on the Head Start Parcel in accordance with the Approved Construction Drawings, Applicable Laws, and this Agreement with a final Certificate of Occupancy issued by the relevant Governmental Authorities and a license issued to County by the California Department of Social Services Community Care Licensing Division for the Preschool Improvements and the Preschool Improvements accepted by County (collectively, "Required Delivery Condition"), no later than eighteen (18) months from the Effective Date ("Delivery Date"). For purposes of illustration only, if the Effective Date is April 30, 2020, the Delivery Date for the Preschool Improvements in the Required Delivery Condition would be on or before October 31, 2021. In order to meet the Delivery Date, the Parties have agreed upon the following "Preschool Improvement Completion Timeline":

1. Developer shall have up to ninety (90) days after the Effective Date to circulate bid notices, select a contractor that is reasonably acceptable to County, receive grading permit approval from City, and submit application(s) to the applicable Governmental Authorities for building permit(s).

2. Developer shall have up to ten (10) days from issuance of building permit(s) to commence construction.

3. Developer shall deliver the Preschool Improvements in the Required Delivery Condition by no later than the Delivery Date.

**H. Progress Report.** Promptly after the Effective Date, Developer shall provide County a written schedule of completion for the Preschool Improvements in accordance with this Agreement, and during construction, Developer shall further provide written progress report of the construction of the Preschool Improvements within ten (10) days of written request by County or as otherwise agreed by the Parties in writing. The report shall contain up-to-date information of construction progress and notification of any permit approval. Developer shall within five (5) business days notify County in writing of the completion of every element in the Preschool Improvement Completion Timeline.

**I. Excusable Delay.** Notwithstanding Paragraph G of this Section 1, in the event Developer, after exercising all reasonable diligence, is unable to meet any of the dates in the Preschool Improvement Completion Timeline due to: failure of the County to comply with the timelines or requirements of this Section 1 which is not remedied within the applicable notice and cure period; or the following reasons which Developer proves are outside the control of Developer and not caused by Developer, government orders due to the COVID-19 pandemic that mandate social distancing, prohibit physical construction of the Preschool Improvements, or delay the City building department's timing to process building permits and perform necessary inspections of the Preschool Improvements, acts of God, strikes, labor troubles, unavailability of necessary construction materials where comparable materials are not available, and third party administrative challenge and/or litigation regarding the construction of the Preschool Improvements on the Head Start Parcel (each an "Unavoidable Event"), provided for all such events only to the extent Developer documents to the County that (1) the Unavoidable Event in fact resulted in a delay to Developer's compliance with subject timeline, (2) the Developer's inability to comply or delay in complying with the subject timeline was the sole and direct result of the Unavoidable Event, and (3) the delay cannot be avoided by alternative means (collectively, "Excusable Delay"); then Developer shall immediately provide written notice to County of such expected delay along with supporting documentation for said delay and an updated construction schedule, and if the delay is verified by the County, which verification shall not be unreasonably withheld, conditioned or delayed, the applicable date(s) in the Preschool Improvement Completion Timeline shall be extended for a period equivalent to the period of such delays. If the delay is not verified by County, then the Preschool Improvement Completion Timeline shall not be extended. For avoidance of doubt, in no event shall an Unavoidable Event relieve Developer from the performance of obligations that are not affected by the Unavoidable Event (e.g. Developer shall diligently complete all activities up to the point that it cannot continue to meet the subject timeline due to an Unavoidable Event), any period of Excusable Delay related to the government's mandated social distancing order regarding the Covid-19 pandemic shall end on the date the government's social distancing mandate is lifted, and Developer's financial inability to perform its obligation in this Agreement shall not constitute an Excusable Delay.

**J. Inexcusable Delay.** Developer agrees that its failure to meet any of the dates set forth in the above Preschool Improvement Completion Timeline may mean

that the Preschool Improvements may not be completed by Developer and delivered to County in the Required Delivery Condition by the Delivery Date. County shall be responsible for staffing, furnishing and opening the Preschool Improvements to the public following the Delivery Date. Developer acknowledges that late completion and delivery of the Preschool Improvements in the Required Delivery Condition will cause County to incur costs not otherwise contemplated by the Parties, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, except as provided in Paragraph I of this Section 1, if Developer does not complete and deliver the Preschool Improvements in the Required Delivery Condition by the Delivery Date, Developer agrees to pay County liquidated damages of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) for each day's delay from the Delivery Date to the date the Preschool Improvements are completed and delivered to County in the Required Delivery Condition. The Parties agree that this charge represents a fair and reasonable estimate of the costs that County will incur by reason of late completion and delivery of the Preschool Improvements. Acceptance of any charge shall not constitute a waiver of Developer's default or prevent County from exercising any of the other rights and remedies available to County as a result of this Agreement or any other agreements of which County and Developer are parties. Notwithstanding a period of Excusable Delay in Paragraph I of this Section 1, the County, acting as landlord's agent under the Ground Lease, shall have the right to terminate this Agreement and the Ground Lease for the Charter School Parcel if the Preschool Improvements are not completed and delivered in the Required Delivery Condition within thirty-six (36) months from the Effective Date ("Outside Delivery Date") and to exercise any rights and remedies available under this Agreement and under the Ground Lease. For purposes of illustration only, if the Effective Date is April 30, 2020, the Outside Delivery Date would be on or before April 30, 2023.

**K. Financing Delay.** Notwithstanding the provisions of Paragraphs G and I of this Section 1, but subject to the provisions of Paragraph J of this Section 1, Developer may extend the Preschool Improvement Completion Timeline up to six (6) months from the Effective Date to obtain financing for construction of the Preschool Improvements on the terms described in the Ground Lease, provided that if such financing is not obtained within six (6) months from the Effective Date, this Agreement shall terminate without obligation of either party but the obligations of the parties under the settlement agreement dated February 25, 2019 executed between the parties shall not be terminated. The status of such financing shall be identified in any progress report delivered pursuant to Paragraph H of this Section 1 until funding, provided that once Developer has obtained its financing, Developer shall send a written notice to County along with certification from the financing issuer on the date that such financing has been obtained, which date shall end the financing delay set forth in this paragraph.

**L. Performance and Payment Bonds.** Developer, or the contractor selected to perform the construction, shall furnish a performance bond in the form attached as Exhibit "E" hereto, and a labor and material (payment) bond in the form attached as Exhibit "F" hereto prior to the commencement of construction of the Preschool Improvements. Each bond shall be issued by a surety qualified to do business in the State of California, which surety shall be acceptable to County, and shall be in an amount equal to one hundred percent (100%) of the contract amount for the construction of the

Preschool Improvements, including any increases due to Approved Change Orders. The bonds shall name County as a beneficiary and shall provide that in the event Developer does not complete and deliver the Preschool Improvements in the Required Delivery Condition by the Delivery Date, the surety shall complete the construction in accordance with this Agreement, or at County's option and upon County's demand, shall return the Head Start Parcel to grade. The County's Director of the Real Estate Services Department is authorized, but not required, to accept substitute security under such terms and conditions as the Director determines, in lieu of the above performance and labor and material (payment) bonds described in this paragraph.

**M. Cost of Construction.** All costs of construction shall be the sole responsibility of Developer and shall be paid by Developer when due. The Developer shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall be asserted, or purportedly asserted, against the Head Start Parcel or any improvements thereon. If any such lien shall be asserted, Developer shall indemnify and defend (with counsel reasonably approved by County) County and City against such lien. Developer's indemnity obligation shall survive completion of the Preschool Improvements and the expiration or earlier termination of this Agreement and shall not be limited by the existence or availability of insurance. If such liens are asserted, Developer shall promptly remove said liens within thirty (30) days after its occurrence and if requested by County, in County's sole discretion, Developer shall post a surety bond to release the Head Start Parcel from any mechanic's liens recorded against the Head Start Parcel. Said bond shall be issued by a surety qualified to do business in California and shall be in an amount prescribed by law.

**N. As-Built Drawings.** Upon the completion of the construction of the Preschool Improvements in accordance with this Agreement, Developer, at its sole cost, shall prepare as-built plans for the Preschool Improvements and shall give three (3) copies of each as-built plan to County. The as-built plans shall be certified by Developer's engineer-of-record and shall reflect the condition of the Preschool Improvements as constructed, with all approved changes incorporated therein.

**O. No Encumbrances.** Notwithstanding anything to the contrary in this Agreement, the Ground Lease, any financing agreements, or any other agreements executed by the Developer or the Developer Affiliate, Developer acknowledges and agrees that it has no right whatsoever to encumber either the Head Start Parcel or the Preschool Improvements whether for any financing obtained by the Developer or the Developer Affiliate to construct the Preschool Improvements on the Head Start Parcel or otherwise and the Head Start Parcel and the Preschool Improvements are not nor shall they be subject to nor be deemed to be encumbered by Developer for any purpose.

## **2. Maintenance of the Preschool Improvements.**

**A.** Developer shall be responsible for the maintenance and care of the Preschool Improvements until County accepts them in the Required Delivery Condition. County shall exercise no control over the Preschool Improvements until so accepted by County. Any use by any person of the Preschool Improvements, or any portion thereof,

shall be at the sole and exclusive risk of the Developer at all times prior to County's acceptance of the Preschool Improvements. Developer shall maintain all the Preschool Improvements in a state of good repair until they are completed by Developer in accordance with this Agreement and accepted by County in the Required Delivery Condition, and until the security for the performance of this Agreement is released but subject to the warranty periods set forth in this Agreement and the Approved Construction Drawing and Developer's obligation at its sole cost and expense for the duration of the initial term of the Ground Lease for the Charter School Parcel to correct any failure of Developer to deliver the Preschool Improvements in compliance with Applicable Laws in effect as of the actual Delivery Date, including, but not limited to compliance with the Americans with Disabilities Act. Maintenance shall include, but shall not be limited to, repair of the building, playground area, parking area, and site improvements, including but not limited to fencing, gates, exterior lighting, pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to County; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by County. If Developer fails to properly prosecute its maintenance obligation under this paragraph, County may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. County shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Preschool Improvements or their condition prior to the County's acceptance in the Required Delivery Condition.

**B.** After the County's acceptance of the Preschool Improvements in the Required Delivery Condition, County shall be responsible for the maintenance and care of the Preschool Improvements as County deems necessary, provided that Developer shall remain responsible, at its sole cost and expense, for any maintenance and repairs pursuant to the warranty periods set forth in this Agreement and the Approved Construction Drawings and corrections required during the initial term of the Ground Lease for the Charter School Parcel due to Developer's failure to deliver the Preschool Improvements in compliance with Applicable Laws in effect as of the actual Delivery Date, including, but not limited to compliance with the Americans with Disabilities Act. The foregoing obligations of Developer shall survive termination of this Agreement.

### **3. Default; Notice; Remedies.**

**A. Default Notice.** If either party is in default or violation of any obligation, term, or condition of this Agreement, the non-defaulting party shall give written notice ("Notice") to the defaulting party of such default or violation and the defaulting party shall remedy the default or violation within ten (10) days of the Notice. If Developer's default or violation constitutes an immediate threat to the public health, safety, or welfare, whether County provides Notice or not, Developer shall immediately and substantially commence the required remedy within twenty-four (24) hours of its occurrence and thereafter diligently pursue such work to completion within ten (10) days of its occurrence, provided that if such default or violation is of a nature that reasonably requires additional

time to complete the remedy; the Developer shall complete such remedy as soon as reasonably possible but within thirty (30) days of its occurrence.

**B. Negotiations Between Designated Representatives.** In the event of a default by a party that is not remedied in accordance with Paragraph A of this Section 3 (other than Developer's failure to complete and deliver the Preschool Improvements by the Delivery Date or the Outside Delivery Date, which shall be subject to the remedies in Section 1 without application of the process set forth in Paragraphs B and C of this Section 3 and in no event shall the process set forth in Paragraph B and C alter the Delivery Date or the Outside Delivery Date unless otherwise agreed by the Parties in a written amendment to this Agreement executed by the governing bodies of the Parties), Developer and County agree to promptly negotiate in good faith to resolve any such outstanding default arising under of this Agreement ("Dispute"). In the event of a Dispute, the Parties shall continue to perform their respective obligations in good faith and shall not suspend performance during the Dispute resolution procedure. The Party raising the Dispute shall give written notice to the other Party of such Dispute, provided that any Notices delivered by County in accordance with this Agreement shall constitute the notice of Dispute required herein. In the event of a Dispute, within five (5) business days after the other Party's receipt of written notice, the Parties agree to meet through their Designated Representatives in good faith in an attempt to resolve the Dispute through informal negotiations. The Designated Representatives shall record the date of the Parties' first in-person meeting. The Designated Representatives for the Parties are as follows: the County's Director of the Real Estate Services Department (or authorized designee) for County and Developer's Executive Director/CEO (or authorized designee) for Developer. If the Parties are unable to resolve the Dispute within thirty (30) business days from the date of said first in-person meeting, the Parties shall proceed to the dispute resolution method in Paragraph C of Section 3. Any Dispute resolutions that would amend the Agreement shall be set forth in writing and shall be approved by the governing bodies of the Parties.

**C. Mediation.** The Parties agree in the event any Dispute is not resolved after commencement of good faith negotiations under Paragraph B of this Section 3, the Dispute shall be submitted to a formal mediation process prior to commencing an action or County exercising its remedies under this Agreement. The mediation shall be convened within forty-five (45) business days of the first meeting of the Designated Representatives and shall conclude within sixty (60) business days of the first meeting of said Designated Representatives. The costs of the mediation shall be shared equally by the Parties. The Parties agree to mediation using then current mediation procedures of JAMS or its successor.

**D. Litigation.** Any Dispute which remains unresolved after participation in the foregoing Dispute resolution procedures in Paragraphs B and C of Section 3 or Developer failure to complete and deliver the Preschool Improvements by the Delivery Date or the Outside Delivery Date may be submitted to litigation in the main branch of the San Bernardino County Superior Court or shall permit either party to terminate this Agreement upon written notice to the other party and exercise its remedies at law or in equity (without any further notice requirements).

**4. Acceptance of Improvements; Termination.** If the Preschool Improvements are properly completed by and delivered to County in the Required Delivery Condition in accordance with this Agreement, the County's Director of the Real Estate Services Department shall be authorized to accept the Preschool Improvements, provided that notwithstanding anything to the contrary in this Agreement, any County acceptance of the Preschool Improvements, as used in this Agreement, is solely for purposes of County's intended use and shall not in any way waive any defects of the Preschool Improvements, any warranties set forth in this Agreement or the Approved Construction Drawings, or any obligations of Developer for the duration of the initial term of the Ground Lease for the Charter School Parcel to correct any failure of Developer to deliver the Preschool Improvements in compliance with Applicable Laws in effect as of the actual Delivery Date, including, but not limited to compliance with the Americans with Disabilities Act. Upon acceptance of the Preschool Improvements by County, Developer shall file with the Recorder's Office of County a notice of completion for the accepted Preschool Improvements in accordance with California Civil Code Section 8182. Upon Developer's delivery of Preschool Improvements in the Required Delivery Condition, this Agreement shall terminate except for those obligations of Developer that survive the termination of this Agreement, including but not limited to Developer's obligations in Paragraphs 5 and 6; provided that the survival of Developer's obligations under this Agreement shall be limited to the warranties and guaranty in Section 5 and the indemnification obligations of Developer under this Agreement for matters occurring or accruing prior to the termination of this Agreement and by reason of Developer's performance of this Agreement, and shall not encompass any matter unrelated to Developer's performance of this Agreement.

**5. Warranty and Guaranty.** Developer hereby warrants and guarantees the Preschool Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping in a vigorous and thriving condition reasonably acceptable to County for the following periods commencing on the actual Delivery Date in the Required Delivery Condition of the Preschool Improvements: a period of one (1) year for labor; a manufacturer's warranty of twenty (20) years for the Factory Mutual Class 1-90 roof; one (1) year for labor and parts for the HVAC unit(s) and a manufacturer's warranty of five (5) years for the HVAC unit(s) (including, but not limited to, compressors, pumps, and motors); and a manufacturer's warranty of five (5) years each for switchboards, panel boards, interior lighting, exterior lighting, lighting controls; and all other manufacturers' warranties as set forth in the Approved Construction Drawings, with all manufacturers' warranties to be transferred to County on the actual Delivery Date. During the foregoing warranty periods, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Preschool Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of County. All repairs, replacements, or reconstruction during the foregoing warranty periods shall be at the sole cost, expense, and liability of Developer and its surety. As to any portions of the Preschool Improvements which have been repaired, replaced, or reconstructed during the foregoing warranty periods, Developer and its surety hereby agree to extend the applicable warranties for an additional corresponding period following

County's acceptance of the repaired, replaced, or reconstructed portion Preschool Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any portion of the Preschool Improvements following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

**6. Indemnification.** Developer agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and City and their respective authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement or the Preschool Improvements or occurring on, in, under or about the Head Start Parcel from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by County or City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Developer's indemnification obligation applies to the "active" as well as "passive" negligence of County or City but does not apply to the "sole negligence" or "willful misconduct" of County or City within the meaning of Civil Code Section 2782. Developer's indemnity obligation shall survive completion of the Preschool Improvements and the expiration or earlier termination of this Agreement and shall not be limited by the existence or availability of insurance.

**7. Insurance.**

**A. Basic Insurance Requirements.** Without in any way affecting Developer's obligation to defend and indemnify City and County as herein provided, and in addition thereto, Developer shall secure and maintain the following types of insurance with the following minimum limits throughout this Agreement:

i. Workers' Compensation/Employers Liability. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons providing services on behalf of Developer and all risks to such persons under this Agreement. Developer agrees that Developer's volunteers are required to be covered by accident insurance and/or workers' compensation.

ii. Commercial/General Liability Insurance. Developer shall carry General Liability Insurance covering all operations performed by or on behalf of Developer providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. The policy coverage shall include:

1. Operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).

4. Explosion, collapse and underground hazards.
5. Personal injury.
6. Contractual liability.
7. \$2,000,000 general aggregate limit.

iii. Commercial Property Insurance providing special form insurance coverage for the buildings, fixtures, equipment and all improvements constituting any part of the Head Start Parcel. Said special form insurance shall provide broad coverage concerning potential risks but shall exclude earthquake liability and shall provide limited coverage for flood risks. Coverage shall be sufficient to insure one hundred percent (100%) of the replacement cost of the Preschool Improvements.

iv. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles and passenger vehicles. The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Developer owns no autos, a non-owned auto endorsement to the general liability policy described above is acceptable.

v. Environmental Liability Insurance. Environmental liability insurance with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

vi. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

vii. If Developer performs any construction of the Head Start Parcel, Developer shall also procure and maintain coverages as follows:

1. For construction contracts for projects over One Million Dollars (\$1,000,000) and less than Three Million Dollars (\$3,000,000) require limits of not less than Three Million Dollars in General Liability and Auto Liability coverage.

2. For construction contracts for projects over Three Million Dollars (\$3,000,000) and less than Five Million Dollars (\$5,000,000) require limits of not less than Five Million Dollars (\$5,000,000) in General Liability and Auto Liability coverage.

3. For construction contracts for projects over Five Million Dollars (\$5,000,000) and less than Ten Million Dollars (\$10,000,000) require limits of not less than Ten Million Dollars (10,000,000) in General Liability and Auto Liability coverage.

4. Developer agrees to require all parties, subcontractors, or others, including, but not limited to, architects, it hires or contracts with in relation to the Agreement to provide insurance covering the contracted operations with the requirements in this Section 7 (including, but not limited to, waiver of subrogation rights) and naming County and City as an additional insured. Developer agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

5. Course of Construction/Installation (Builder's Risk) property insurance providing all risk, including theft coverage for all property and materials to be used on the construction project. The insurance policy shall not have any coinsurance penalty.

**B. Required Policy Provisions.** Each of the insurance policies which Developer is required to procure and maintain as part of this Agreement shall include the following provisions:

1. Additional Insured. All policies, except for the Workers' Compensation, shall contain endorsements naming County and City and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Developer's use of the Head Start Parcel and Developer's performance of its obligations under this Agreement. The additional insured endorsements shall not limit the scope of coverage for County and City to vicarious liability but shall allow coverage for Developer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

2. Waiver of Subrogation Rights. Developer shall require the carriers of required coverages to waive all rights of subrogation against County and City, their officers and employees. All general or auto liability insurance coverage provided shall not prohibit Developer and Developer's employees or agents from waiving the right of subrogation prior to a loss or claim. Developer hereby waives all rights of subrogation against County and City.

3. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by County and City.

4. Severability of Interests. Developer agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between Developer and County and City or between County and City and any other insured or additional insured under the policy.

5. Proof of Coverage. Developer shall furnish Certificates of Insurance to the County Real Estate Services Department (RESA), administering the

Agreement on behalf of County, evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of any work on or use of the Head Start Parcel, and Developer shall maintain such insurance from the commencement date of this Agreement until this Agreement expires or earlier terminated. Developer agrees to provide at least thirty (30) days written notice to County RESD prior to any termination or expiration of said insurance coverage. Within fifteen (15) days of the commencement date of this Agreement, Developer shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

6. Acceptability of Insurance Carrier. Unless otherwise approved by County's Department of Risk Management, administering the Agreement on behalf of County, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII". Insurance provided by a joint powers authority shall be deemed to satisfy the foregoing requirement.

7. Deductibles: Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by County's Risk Management.

8. Insurance Review. Insurance requirements are subject to periodic review by County. County's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever County's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, County's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to County risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Developer agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County or County's RESD or County's Department of Risk Management to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County .

9. Failure to Procure Insurance. All insurance required must be maintained in force at all times by Developer. Failure to maintain said insurance, due to expiration, cancellation, or other reasons shall be cause for County to give notice to immediately suspend Developer's activities at the Head Start Parcel. Failure to reinstate said insurance within thirty (30) days of notice to do so shall be cause for termination and for forfeiture of this Agreement, and/or County, at their discretion, may procure or renew

such insurance and pay any and all premiums in connection therewith, and all monies so paid by County shall be repaid by Developer to County upon demand but only for the pro rata period of non-compliance.

10. County shall have no liability for any premiums charged for such coverage(s). The inclusion of City or County as additional named insured is not intended to and shall not make a partner or joint venturer with Developer.

11. Developer agrees to require all parties or subcontractors, or others it hires or contracts with related to its activities at the Head Start Parcel and the performance of Developer's obligations hereunder to provide insurance covering the contracted operation with the requirements in this Section 7 (including waiver of subrogation rights) and naming County and City as an additional insured. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

**8. Relationship Between the Parties.** The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and County and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of either or both of City and County. Developer is, and shall be, acting at all times in the performance of this Agreement as an independent contractor.

**9. General Provisions.**

**A. Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

**B. Cooperation.** The Parties shall fully cooperate with one another, to attain the purposes of this Agreement.

**C. Construction; Captions.** It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement. Any reference to any Section of this Agreement cited without a decimal includes all Sections following the cited Section. For example, a reference to Section 7 includes 7(A), *et seq.*

**D. Notices.** All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

**COUNTY'S NOTICE ADDRESS:** County of San Bernardino  
Real Estate Services Department  
385 N. Arrowhead Avenue, Third Floor  
San Bernardino, California, 92415-0831

**DEVELOPER'S NOTICE ADDRESS:** High Desert Partnership in Academic  
Excellence Foundation, Inc.  
Lewis Center for Educational Research  
Attn: CEO  
17500 Mana Road  
Apple Valley, California, 92307

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person, shall be in writing and either served personally, sent by United States mail, postage prepaid, first-class mail, certified or registered, return receipt requested, or by nationally recognized overnight courier to the other party at the address listed in this paragraph. Either party may change its address by notifying the other parties of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt if personally delivered on a business day; otherwise on the next business day, or (ii) the date of delivery or refusal of the addressee to accept delivery if delivered on a business day, otherwise on the next business day, if such notice is sent by United States mail, postage prepaid, certified or registered, return receipt requested, or by nationally recognized overnight courier.

**E. Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

**F. Assignment or Transfer of Agreement.** Developer shall not assign, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City and County in their sole discretion. Any attempt to do so shall be null and void, and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment or transfer. Unless specifically stated to the contrary in City's and County's written consent, any assignment or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. Notwithstanding the foregoing, Developer may assign its interest as the developer under this Agreement to the mortgagee as security for the financing of the Preschool Improvements, provided that in no event shall the Head Start Parcel nor the Preschool Improvements be encumbered in any way as collateral or security for Developer's financing or the foregoing assignment. County agrees to execute an acknowledgement of such assignment in substantially the form attached as Exhibit "G", including an obligation to provide notice of any default of Developer pursuant to this Agreement to such mortgagee simultaneously with its delivery to Developer and that in no event shall the Head Start Parcel nor the Preschool Improvements be encumbered in any way as collateral or security for Developer's financing or the foregoing assignment.

**G. Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

**H. No Third-Party Beneficiaries.** Except for Developer Affiliate, Developer's mortgagee as described in Paragraph F of this Section and the City, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

**I. Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**J. Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the main (downtown) branch of the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to California Code of Civil Procedure Section 394) or rule of court that would allow it to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the main (downtown) branch of the Superior Court of California, County of San Bernardino.

**K. Attorneys' Fees and Costs.** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against the City or County, including such costs and attorneys' fees payable under Section 6.

**L. Former County Officials.** Developer agrees to provide information on former County administrative officials (as defined below) who are presently employed by or currently represent Developer. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of Developer. The information also includes the employment with and/or representative capacity and the date those individuals began employment with or representation of Developer. The information does not include County administrative officials who served in a volunteer capacity with, represented, or were employed by Developer prior to January 1, 2019. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "G", List of Former County Officials.)

**M. Public Records Disclosure.** All information received by the County from Developer or from any source concerning this Agreement, including the Agreement itself, may be treated by the County as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 et seq. (the "Public Records Act"). Developer acknowledges and understands that although all materials received by the County in connection with this Agreement are intended for the exclusive use of the County, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which Developer has reasonably requested County to hold in confidence is made to the County, County shall endeavor to notify the Developer of the request and shall thereafter disclose the requested information unless the Developer, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides County a legally sound basis for the nondisclosure, and agrees to indemnify, defend (with counsel reasonably approved by County), and hold the City and County harmless in any/all actions brought to require disclosure. Developer waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event County fails to notify Developer of any such disclosure request and/or releases any information concerning the contract received from the Developer or any other source.

**N. Counterparts.** This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, the day and year first above written.

**COUNTY: County of San Bernardino**

**DEVELOPER: High Desert 'Partnership in Academic Excellence' Foundation, Inc.**

By:   
\_\_\_\_\_  
Gary McBride  
Chief Executive Officer

By:   
\_\_\_\_\_  
Title: CHAIRMAN

**APPROVED AS TO LEGAL FORM:**

MICHELLE D. BLAKEMORE,  
County Counsel  
San Bernardino County

By:   
for \_\_\_\_\_  
Robert F. Messinger  
Principal Assistant County Counsel

With Consent Of:

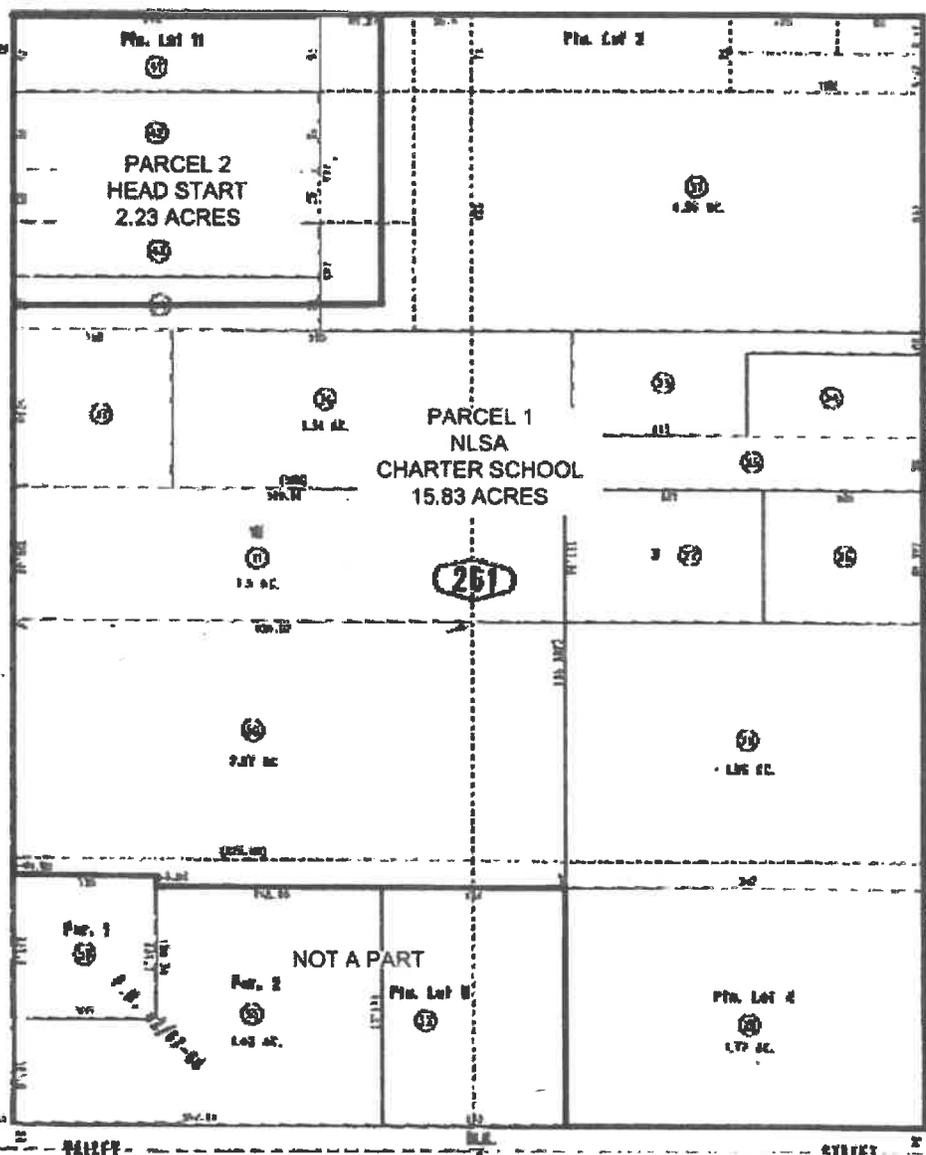
**CITY: City of San Bernardino**

By:   
\_\_\_\_\_  
Title: City Manager

# EXHIBIT "A"

City of San Bernardino  
 Planning Department  
 315 North Main Street, 3rd Floor  
 San Bernardino, CA 92402

Parcel 2  
 Parcel 1  
 Parcel 3  
 Parcel 4  
 Parcel 5  
 Parcel 6  
 Parcel 7  
 Parcel 8  
 Parcel 9  
 Parcel 10  
 Parcel 11  
 Parcel 12  
 Parcel 13  
 Parcel 14  
 Parcel 15  
 Parcel 16  
 Parcel 17  
 Parcel 18  
 Parcel 19  
 Parcel 20  
 Parcel 21  
 Parcel 22  
 Parcel 23  
 Parcel 24  
 Parcel 25  
 Parcel 26  
 Parcel 27  
 Parcel 28  
 Parcel 29  
 Parcel 30  
 Parcel 31  
 Parcel 32  
 Parcel 33  
 Parcel 34  
 Parcel 35  
 Parcel 36  
 Parcel 37  
 Parcel 38  
 Parcel 39  
 Parcel 40  
 Parcel 41  
 Parcel 42  
 Parcel 43  
 Parcel 44  
 Parcel 45  
 Parcel 46  
 Parcel 47  
 Parcel 48  
 Parcel 49  
 Parcel 50  
 Parcel 51  
 Parcel 52  
 Parcel 53  
 Parcel 54  
 Parcel 55  
 Parcel 56  
 Parcel 57  
 Parcel 58  
 Parcel 59  
 Parcel 60  
 Parcel 61  
 Parcel 62  
 Parcel 63  
 Parcel 64  
 Parcel 65  
 Parcel 66  
 Parcel 67  
 Parcel 68  
 Parcel 69  
 Parcel 70  
 Parcel 71  
 Parcel 72  
 Parcel 73  
 Parcel 74  
 Parcel 75  
 Parcel 76  
 Parcel 77  
 Parcel 78  
 Parcel 79  
 Parcel 80  
 Parcel 81  
 Parcel 82  
 Parcel 83  
 Parcel 84  
 Parcel 85  
 Parcel 86  
 Parcel 87  
 Parcel 88  
 Parcel 89  
 Parcel 90  
 Parcel 91  
 Parcel 92  
 Parcel 93  
 Parcel 94  
 Parcel 95  
 Parcel 96  
 Parcel 97  
 Parcel 98  
 Parcel 99  
 Parcel 100



Parcel 1  
 Parcel 2  
 Parcel 3  
 Parcel 4  
 Parcel 5  
 Parcel 6  
 Parcel 7  
 Parcel 8  
 Parcel 9  
 Parcel 10  
 Parcel 11  
 Parcel 12  
 Parcel 13  
 Parcel 14  
 Parcel 15  
 Parcel 16  
 Parcel 17  
 Parcel 18  
 Parcel 19  
 Parcel 20  
 Parcel 21  
 Parcel 22  
 Parcel 23  
 Parcel 24  
 Parcel 25  
 Parcel 26  
 Parcel 27  
 Parcel 28  
 Parcel 29  
 Parcel 30  
 Parcel 31  
 Parcel 32  
 Parcel 33  
 Parcel 34  
 Parcel 35  
 Parcel 36  
 Parcel 37  
 Parcel 38  
 Parcel 39  
 Parcel 40  
 Parcel 41  
 Parcel 42  
 Parcel 43  
 Parcel 44  
 Parcel 45  
 Parcel 46  
 Parcel 47  
 Parcel 48  
 Parcel 49  
 Parcel 50  
 Parcel 51  
 Parcel 52  
 Parcel 53  
 Parcel 54  
 Parcel 55  
 Parcel 56  
 Parcel 57  
 Parcel 58  
 Parcel 59  
 Parcel 60  
 Parcel 61  
 Parcel 62  
 Parcel 63  
 Parcel 64  
 Parcel 65  
 Parcel 66  
 Parcel 67  
 Parcel 68  
 Parcel 69  
 Parcel 70  
 Parcel 71  
 Parcel 72  
 Parcel 73  
 Parcel 74  
 Parcel 75  
 Parcel 76  
 Parcel 77  
 Parcel 78  
 Parcel 79  
 Parcel 80  
 Parcel 81  
 Parcel 82  
 Parcel 83  
 Parcel 84  
 Parcel 85  
 Parcel 86  
 Parcel 87  
 Parcel 88  
 Parcel 89  
 Parcel 90  
 Parcel 91  
 Parcel 92  
 Parcel 93  
 Parcel 94  
 Parcel 95  
 Parcel 96  
 Parcel 97  
 Parcel 98  
 Parcel 99  
 Parcel 100

City of San Bernardino  
 Planning Department  
 315 North Main Street, 3rd Floor  
 San Bernardino, CA 92402  
 City of San Bernardino  
 Planning Department  
 315 North Main Street, 3rd Floor  
 San Bernardino, CA 92402  
 City of San Bernardino  
 Planning Department  
 315 North Main Street, 3rd Floor  
 San Bernardino, CA 92402

## EXHIBIT B

### MODIFIED SPECIFICATIONS FOR PRESCHOOL IMPROVEMENTS

April 10, 2020

Developer shall complete the Preschool Improvements in accordance with the plans and specifications set forth in the Head Start Facility Bid Issue prepared by TSK Architects dated February 11, 2020 ("February 2020 TSK Bid Set"), as updated by the Modified Specifications for the Preschool Improvements dated April 10, 2020, as shown on this Exhibit "B" ("Modified Specifications"). In addition to any specific items identified herewith, the development team shall provide a fully complete project, meeting all requirements of the authorities having jurisdiction requirements and capable of licensing the Preschool Improvements for its intended use. In the event of any conflict between the February 2020 TSK Bid Set and these Modified Specifications, these Modified Specifications shall control.

#### DRAWING SHEET

GO.11

#### ITEM

All restrooms intended to service children shall be heights appropriate for age group being served.

#### CIVIL SHEETS

The County will not be engaging in a review of civil documents. The County shall rely on development professional team to validate the appropriateness of the design. The County only highlights the licensing requirement for no ponding water in walk areas and looks to the A/E team to verify adequate slope has been accommodated for flow, especially immediately adjacent to the building at all walkways and where downspouts daylight.

A1.01

Warming Kitchen: The warming kitchen represented on drawings is diagrammatic. It is the responsibility of the development team to provide a Warming Kitchen design that is fully functional for its intended use and to meet all licensing requirements, and shall include the following items not fully represented on Bid Set

- Hand washing sink
- Coordinate depressed slab location for walk in refrig/freezer unit
- Provide (3) commercial grade, powder coated, lockable, full height metal cabinets with shelving in warming kitchen in addition to stainless steel, restaurant style open racks for food storage. The total capacity between racks and cabinets should be similar to the capacity to the storage space at existing facility
- All kitchen equipment requirements for electrical, plumbing, HVAC, etc. shall be coordinated with County provided equipment information and equipment being relocated

Break Room 109: Layout provided named "Head Start Break Room Update, dated April 1, 2020 is acceptable with one revision.

Relocate door 109B to enter restroom “All-Gender 109” from Entry/Reception Corridor 100.

Parent Instruction 122: Provide backing to support 96” monitor bracket and power/data device at +54” A.F.F. at west wall.

Front Entry: Provide exterior, flush walk off mat

Typical Classrooms: Provide a commercial grade, powder coated, full height, 48” wide x 24” deep metal, lockable, double door cabinet with shelving at each classroom to meet the requirement of a storage closet.

Site Plan AS1.01

Provide 8’-0” chain link perimeter fencing with gates across drive aisles and vision obscuring mesh at Outdoor Activity Area and along portion of front elevation that acts as a portion of the Outdoor Activity Area. Provide 18” long cane bolts and drilled hole and sleeve in asphalt pavement at each swing gate leaf to allow of gates to be locked in open position during hours of operation. Provide local fire authority approved knox box for gates as required.

Light standards at north perimeter planting fingers are directly in front of trees. Stagger light standards and trees as appropriate.

Parking lot LED light fixtures and exterior security camera installation shall be as shown on Technology Floor Plan dated April 13, 2020, which is approved as variation from 2016 County Standards.

A1.31

Flooring material in classrooms, circulation spaces, parent instruction, etc. shall be Mohawk, Select Step Stone LVT, size: 18”W x 36”L, glue down, commercial grade resilient tile in lieu of carpet. Color to be coordinated and approved by County PSD. They are currently using T001 M Bronze Kona in other locations. Color will need to be coordinated with other finishes already specified by A & E team.

A3.01

Reflected Ceiling Plan (and related specification sections): Not complete.

- Provide lighting per electrical lighting plan.
- Provide heavy duty rated suspended ceiling system (not medium duty)

A4.01

Roof Plan:

- Provide 20 year manufacturer’s warranty and Factory Mutual Class 1-90 (attachment criteria)
- Provide roof walk pads from roof access hatch to each mechanical unit and around each unit

ES1.01

Exterior Lighting Plan:

- Provide exterior wall pack light fixtures around perimeter of building

T1.11

Technology Floor Plan:

- Plan showing locations for future camera installation.
- Provide conduit for cameras at locations shown.

E1-11 & ES1-01 Attached E1-11 & ES1-01, delta 2, dated April 10, 2020 shall supersede the previously issues sheets E1-11 & ES1-01

## EXHIBIT C

### PREVAILING WAGE REQUIREMENTS

- A. All or a portion of the Preschool Improvements require the payment of prevailing wages and compliance with the following requirements. As used in this exhibit, the term "Contractor" shall include Developer and Developer's contractor and/or subcontractors and the term "Project" shall mean the Preschool Improvements made by or on behalf of Developer pursuant to the Agreement.

#### 1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, *et seq.*, the Developer will obtain from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Project is to be performed. Copies of said rates are on file with the Developer, and will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Project, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Project, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, *et seq.*

#### 2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Project, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

#### 3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Project. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

#### 4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a

contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Project.

## **5. Payroll Records:**

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Project. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Project performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
  - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor 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;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and

- v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Project shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, and County shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, 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 Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Project or upon any part of the Project, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, 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 at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Project by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
- i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
  - ii. No contractor or subcontractor may be awarded a contract for public work or perform 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.
  - iii. This project is subject to compliance monitoring and enforcement by the DIR.
  - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
  - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
    - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
    - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
    - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
  - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

- b. Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to 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 public work contract that is subject to the requirements of this chapter. For

the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in

violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work

performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

c. Labor Code section 1771.1 states the following:

“(a) 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 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.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liability for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments

under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work,

as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

d. Labor Code section 1771.4 states the following:

“a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Project shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Project. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

- a. Submit Contract Award Information (DAS-140):
  - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*

- iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
- iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
- v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see  
  
<http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

b. Employ Registered Apprentices

- i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
- ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.

- vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

### **3. Exemptions to Apprenticeship Requirements:**

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
  - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
  - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
  - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
  - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).

- v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
  - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

**EXHIBIT D**

**CERTIFICATE REGARDING WORKERS' COMPENSATION**

**Labor Code Section 3700**

"Every employee except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, 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 his or her employees."

I am aware of the provisions of Section 3700 of the Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor: \_\_\_\_\_

\_\_\_\_\_

By:

Its:

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 filed with the awarding body prior to performing any work under the contract.

**EXHIBIT E**

**FORM OF PERFORMANCE BOND**

WHEREAS, County OF SAN BERNARDINO ("County") has authorized \_\_\_\_\_ ("Principal") to perform the following project ("Project"):

Head Start Preschool Improvements at 201 Allen Street, San Bernardino, California.

WHEREAS, the Principal is required under the terms of the Agreement to furnish a bond to County as obligee ensuring its full and faithful performance of the Contract Documents, which are fully incorporated herein by this reference,

NOW, THEREFORE, we, the Principal and \_\_\_\_\_, as Surety, hereby guarantee the Principal's full, faithful and complete performance of the Contract Document requirements in the penal sum of \_\_\_\_\_ DOLLARS (\$) for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators and successors, jointly, severally, and firmly by this agreement to perform or have performed all of the work and activities required to complete the Project pursuant to the Contract Documents and to pay to County all damages County incurs as a result of the Principal's failure to fully perform in accordance with the Contract Documents.

The condition of the obligation is such that if the Principal, its heirs, executors, administrators, successors or assigns shall in all things abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any amendment thereof made as therein provided, on its or their parts to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall insure and indemnify and save harmless County, its officers and agents, as therein stipulated, 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 no change, extension of time, alteration or addition to the Contract Documents shall in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition.

Principal and Surety further agree to pay all costs incurred by County in connection with enforcement of this bond, including, but not limited to County's reasonable attorney's fees and costs incurred, with or without suit, in addition to any other sum required by this bond. Surety further agrees that death, dissolution, or bankruptcy of the Principal shall not relieve the Surety of its obligations hereunder.

In witness whereof, five (5) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

To be signed by  
Principal and Surety

and acknowledgment

and notarial seal to

be attached.

\_\_\_\_\_

PRINCIPAL

By: \_\_\_\_\_

TITLE \_\_\_\_\_

\_\_\_\_\_

SURETY

By: \_\_\_\_\_

TITLE \_\_\_\_\_

The above bond is accepted and approved this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
County OF SAN BERNARDINO

**EXHIBIT F**

**FORM OF PAYMENT BOND**

WHEREAS, County OF SAN BERNARDINO ("County") has authorized: \_\_\_\_\_ ("Principal") to perform the following project ("Project"):

Head Start Preschool Improvements at 201 Allen Street, San Bernardino, California;

AND WHEREAS, the Principal is required to furnish a bond in connection with said contract to secure the payment of claims of laborers, mechanics or material suppliers employed on work under said contract as provided by law;

NOW, THEREFORE, We, the Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto Owner in the sum of

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), said sum being one hundred percent (100%) of the estimated amount of the contract, for which for the payment of which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly and by these presents.

THE CONDITION of this obligation is such that if the Principal, its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay any of the persons referred to in Section 9100 of the Civil Code or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, that the Surety herein will pay for the same, in an amount not exceeding the sum specified in this bond, otherwise, the above obligation shall be void. In case suit is brought upon this bond, the said Surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall insure to the benefit of any of the persons referred to in Section 9100 of the Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond. Any such right of action shall be subject to the provisions of Sections 8608 and 9566 of the Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

To be signed by

*Principal and Surety  
and acknowledgment  
and notarial seal to  
be attached.*

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_

Its: \_\_\_\_\_

The above bond is accepted and approved this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

**EXHIBIT G**

**LIST OF FORMER COUNTY OFFICIALS**

**INSTRUCTIONS:** List the full name of the former County Administrative Official, the title/description of the Official's last position with the County, the date the Official terminated County employment, the Official's current employment and/or representative capacity with the Developer, the date the Official entered Developer's employment and/or representation.

OFFICIAL'S NAME:                      REQUIRED INFORMATION

Developer certifies that the foregoing information is true and accurate.

**DEVELOPER:**

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

## EXHIBIT G

### FORM OF ASSIGNMENT

#### ASSIGNMENT OF IMPROVEMENT AGREEMENT

This Assignment of Improvement Agreement (“Assignment”) is made as of June 1, 2020 by and between High Desert Partnership in Academic Excellence Foundation, Inc., a California nonprofit public benefit corporation (“Assignor”) and Wilmington Trust, National Association, as Trustee (the “Trustee”) for the holders of the California Enterprise Development Authority Charter School Revenue Bonds (Norton Science and Language Academy Project), Series 2020 (the “Bonds”)

**FOR VALUE RECEIVED**, Assignor does hereby sell, assign, pledge, transfer and set over to Trustee, and hereby grants to Trustee a security interest in, all of its right and interest as developer in the “Improvement Agreement dated \_\_\_\_\_, 2020”, entered into by and between the Assignor, as developer, and the County of San Bernardino (the “County”) in connection with the Assignor’s development and construction of certain preschool facilities for the County’s Head Start program (the “Preschool Improvements”) located on real property with an address of 205 S. Allen Street in San Bernardino, California (the “Head Start Parcel”), as the Preschool Improvements and the Head Start Parcel are more specifically described in the Improvement Agreement. The Assignor’s interest as developer in the Improvement Agreement is assigned as security for certain obligations of Assignor and its affiliates related to the Bonds, a portion of the proceeds of which will be applied to finance the construction of the Preschool Improvements.

For the avoidance of doubt, the assignment of Assignor’s interest as developer in the Improvement Agreement granted herein does not include any real or personal property interests in the Head Start Parcel nor the Preschool Improvements as security for the Bonds and nothing herein or in any other financing documents for the Bonds shall in any manner create a security interest in the Head Start Parcel or the Preschool Improvements even though a portion of the Bonds proceeds will be used for the Preschool Improvements. In the event of conflict between the Improvement Agreement, this Assignment and any other financing documents for the Bonds, the Improvement Agreement shall control.

Assignor hereby represents and warrants that no previous assignment of its interest as developer in the Improvement Agreement has been made, and Assignor agrees not to further assign, sell, pledge, transfer, mortgage or otherwise encumber its interest as developer in the Improvement Agreement as long as this Assignment is in effect.

This Assignment shall not cause Trustee to be under any obligation to Assignor or the County for the performance or observance of any of the representations, warranties, terms, obligations or conditions of the Improvement Agreement unless Trustee performs Assignor’s obligations under the Improvement Agreement; in which event, Trustee shall provide written notice to County of such performance on behalf of Assignor.

Notwithstanding this Assignment, Assignor shall be and remain obligated to the County to perform all of Assignor’s obligations and agreements under the Improvement Agreement.

Assignor does hereby irrevocably constitute and appoint Trustee its true and lawful attorney-in-fact with full and irrevocable power and authority in the place and stead of Assignor and in the name of Assignor, for the purpose of carrying out the terms of this Assignment, to take any and all actions and to execute any and all instruments which may be necessary to accomplish the purposes of this Assignment. This power-of-attorney is a power coupled with an interest and shall be irrevocable.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the parties hereto.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, Assignor has caused this Assignment to be executed as of June 1, 2020.

HIGH DESERT 'PARTNERSHIP IN ACADEMIC  
EXCELLENCE' FOUNDATION, INC., a  
California nonprofit public benefit corporation

By   
\_\_\_\_\_  
Lisa Lamb, Executive Director

[Signature Page to Assignment of Improvement Agreement]