MARINA COAST WATER DISTRICT

Water, Sewer and Recycled Water Infrastructure Agreement

for the

Monterey Bay Charter School - New School Project at California State University, Monterey Bay

WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

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WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this _____Day of _____ 20___("Effective Date"), between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and MBCS Properties, LLC, a California limited liability company formed to support the Monterey Bay Charter School, an autonomously chartered K-8 public school, with its principal offices at 1004 David Avenue, Pacific Grove, CA 93950, hereinafter called the "Developer" (collectively, the "parties"). The name of the Developer's development that is the subject of this Agreement, is Monterey Bay Charter School - New School at CSUMB, located at 7th Avenue and Colonel Durham Road, Seaside, California.

1. Definitions; District's Role; Term of this Agreement.

1.1 Definitions, whenever used in this Agreement, the following terms shall have the following respective meanings:

a. "Agreement" means this Water, Sewer and Recycled Water Infrastructure Agreement as it may be amended from time to time in accordance with the terms and conditions hereof.

b. "City" means the City of Seaside, the California State University, Monterey Bay and/or the appropriate Agency of Land Use Jurisdiction.

c. "Contractor" means any contractor with which the Developer has a direct contractual relationship to perform any work under this Agreement.

d. "Development" means that certain property located at 7th Avenue and Colonel Durham Road, Seaside, California and legally described in Exhibit "B" and shown on the map at Exhibit "C."

e. "Facilities" shall mean those certain infrastructure improvements and system provided for in this Agreement and as approved by District as part of its review of the Development plans, Facilities shall include, but not be limited to, pipes, pumps, electrical and instrumentation and controls.

f. "Procedures" means the District's *Procedure Guidelines and Design Requirements*.

g. 'Standards" means the District's *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities*.

h. "Water Allocation" means the total water allocated by the City/Land Use Jurisdiction for the Development as documented in Exhibit "A" and described in Exhibits "B" and "C".

i. "FORA" means Fort Ord Reuse Authority.

1.2 Allocation of Water Capacity for the Development. The parties hereto expressly agree that as a condition precedent for the performance of the District's obligations hereunder, Developer must provide proof to the satisfaction of the District that the City has approved the allocation of water capacity for the Development from the water and recycled water capacity allocated to the City by the Fort Ord Reuse Authority (FORA). The water allocation for this project is 8.79-AFY from the CSUMB water allocation provided by FORA (see Exhibit "A"). Notwithstanding, neither the City nor the District may approve water allocations that exceed the allocations set by FORA or other appropriate agency of land use jurisdiction.

1.3 Sewer Capacity. The District provides sewer collection from customers and conveyance of those sewer flows to the Monterey Regional Water Pollution Control Agency's (MRWPCA) Regional Interceptor System which discharges to the MRWPCA Wastewater Treatment Plant (WWTP). Capacity within the WWTP for the Development must be coordinated with MRWPCA. To the extent possible, the District will allocate its existing pre-paid WWTP Capacity to the Development. If additional WWTP Capacity is required for the Development, the Developer shall purchase the capacity from the MRWPCA at the Developer's sole expense, and shall provide proof of payment for that capacity right to the District at the time the sewer infrastructure is conveyed. Furthermore, the Developer understands and agrees that nothing herein shall be construed as a representation of future sewer capacity by either City or District other than as currently established by the type and density of development as included in the FORA Consistency Determinations or other appropriate agency of land use jurisdiction.

1.4 District's Role. The District's role in the Development is to approve the plans for facilities, inspect the construction of the facilities, accept the transfer of the title to the facilities, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Ord Service Area from time to time.

1.5 Term. This Agreement commences upon the above Effective Date and shall expire (a) three (3) years thereafter or (b) upon completion by the Developer and acceptance by the District of all facilities required by this Agreement and the required warranty period, whichever occurs first, unless terminated sooner as provided in section 17 of this Agreement.

2. Design and Construction Requirements

2.1 The facilities shall be designed, constructed and be operable in strict accordance with the District's requirements, which shall be a condition of the District's acceptance of the system facilities under this Agreement. The District's requirements include, but are not limited to the following:

2.1.1 Developer shall design and construct the facilities in strict accordance with the District's most recent Procedures and Standards in effect at the time of construction, (contained in updated Procedures) and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be addressed during the plan review process or at such other times as any such

conflict is discovered. A licensed civil engineer registered in the State of California shall prepare all plans and specifications for the Developer.

2.1.2 The Developer shall comply with the District's most recent Procedures and the District's most recent Standards in effect at the time of construction when submitting project plans and specifications to the District for review and consideration for approval. District's review shall commence after the District determines compliance with District's Procedures regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the Development's plans and specifications shall commence after receipt of the initial deposit (see Paragraph 2.1.7). District may approve plans concurrent with the City's approval.

2.1.3 The Developer shall comply with most recent District Code in effect at the time of construction including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that "[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District … " Section 4.28 does not require the use of recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also install the lateral lines from each turnout. The Developer, or its successors or assignees (such as an owners association), will assist MCWD to obtain all required permits for the on-site use of recycled water. This shall include but is not limited to, complying with the California Department of Health Services, the State of California Regional Water Quality Control Board and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District shall have the right to inspect the construction of the facilities and verify that construction conforms to the Development plans and specifications. District's right to inspect extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have the right to inspect special fixtures including, zero water use urinals, hot water recirculation systems, etc. The District's right to inspect does not in any way eliminate or supersede any inspection obligations by the City. The District will inform the Developer of required field changes. The Developer shall be responsible for obtaining all easements outside publicly dedicated rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District.

2.1.5 All facilities shall be tested to meet District requirements. No facilities or portion thereof will be accepted without meeting all District test requirements. The District shall have the right to inspect work in progress in the construction of either in-tract or out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as described above.

2.1.6 Plan Review Fees. The Developer, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required

by the District for the Development. These fees will be determined by the District at the time the fees are due and payable. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) If the District Engineer determines consultant assistance is required for plan check review or portion thereof, the Developer agrees to prepay the additional plan check fees if that cost exceeds the balance on the initial deposit. The District shall obtain the Developer's written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check fees. Any surplus fees shall be returned to the Developer, or at Developer's request, held by the District and used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed facilities. All construction inspection costs incurred by MCWD conducting the implementation of this project shall be paid for by the Developer. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed facilities, the Developer shall provide to the District estimated construction inspection costs, which may be planned for as ___ three percent (3%) of construction inspection costs of MCWD infrastructure pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any water, recycled water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructures within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer shall be solely responsible for repair, replacement and maintenance of existing water and sewer facilities to remain within the Development boundaries during the construction of the Development, regardless of whether the facilities are for the benefit of the Development.

4. District to Serve Development

4.1 District will deliver water, recycled water and provide sewer service to the Development after final Board Acceptance of the conveyance of the facilities and final Board Acceptance of the facilities (see *Procedures* section 300.25). Thereafter, the District will bill and serve the end-user(s) directly. The Developer shall pay the prepayment of applicable meter fees and Capacity Charges, cross connection charges, and all other applicable fees and charges for service on the former Fort Ord (or City, as the case may be). Once the applicable fees and charges are determined and paid in full, the District will immediately begin water service with the installation of the water meter(s). The District shall provide sewer service upon installation of water meters and payment of all applicable fees. The District's obligations in this section are subject to District's rules, regulations, policies and ordinances, which may be updated from time

to time.

5. Capacity Charge

5.1 The current capacity charges, as of July 1, 2016, for water and sewer services are $8,010 per EDU and $3,322 per EDU, respectively. These charges are due prior the installation of water meters. The District Board of Directors reserves its right to review and revise these charges from time to time subject to applicable law and the District's approval procedures for such charges. Developer agrees to pay the capacity charge in effect at the time of providing services.

6. Provision for Non-Potable Water Use

6.1 Based upon existing studies, the District does not have sufficient existing firm water supplies to meet the water demands of projected developments within the District's service area. The District has investigated a recycled water project, a desalination project, and a combination of those projects to meet future water demands within the District. Therefore, improvement plans must be compatible with and anticipate the availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations.

6.2 Developer, and its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use if and when it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer, or its successors or assignees agree that the District-established cost will be paid by the recycled water customers.

7. Licensed Contractor

7.1 The Developer, or his authorized representative (contractor, or subcontractors as the case may be) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to perform the specified work required for the Development. District reserves the right to waive this requirement at its sole discretion where permitted under state statute.

7.2 The Developer, or its contractor, shall be skilled and regularly engaged in the installation of water, recycled and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Upon request, contractors must furnish evidence of their qualifications to do the work in a form suitable to the District prior to the commencement of any work on the facilities.

8. Permits, Easements, and Related Costs

8.1 Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof. Developer shall obtain all easements (excluding easements within existing public rights of way) necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance, replacement and removal of said facilities and for the location of the facilities. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer. Easements shall be in a form approved by the District and it shall be

the Developer's responsibility to have the approved easements recorded. Developer shall provide proof of recordation of the easements, in a form satisfactory to the District, prior to the District's authorization to construct, acceptance of any plan set, and obligation to provide any of the services contemplated by this Agreement.

9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed facilities, or portion thereof. The District will not accept any facility until its Engineer has given written approval that it satisfies the District's requirements. Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the facilities, subject to the limitations set forth in Paragraph 2 *Design and Construction* Requirements. Developer shall reimburse District for costs to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized representative (developer's contractor). This reimbursement obligation is limited to the warranty period described in paragraph 15 *Warranties*. Developer shall remit to District prior to the conveyance of the facilities to the District, payment of all costs due and unpaid under this Agreement over and above deposits previously paid to the District. If there are surplus deposit funds or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds upon acceptance by the District of all facilities required to be constructed under this Agreement.

10. District's Non-responsibility for Acts or Omissions of Developer, etc.; Developer Responsible for Verifying Underground Utility Lines and Surface Obstructions

10.1 The District is not responsible for, and does not assume any responsibility or liability whatsoever for, acts and omissions of the Developer, Developer's contractors or any contractor's subcontractors or suppliers at any tier during the design and construction of the facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

11. As-Built Plans, Specifications, Values, Etc.

11.1 Developer shall, as a condition of District's acceptance of the facilities, provide to the District in accordance with Section 400.13 of the *Procedures* the following:

11.1.1 One set each of Mylar drawing prints and AutoCAD digitized files of the improvement plans, which show all of the facilities, and one hardcopy and one electronic copy of the specifications, and one hardcopy and one electronic copy of any contract documents used for the construction of the water, sewer and recycled water system facilities. Scanned and signed copies in Adobe Acrobat format are also required.

11.1.2 One hardcopy and one electronic copy of a complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the facilities, with values

applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

11.1.3 Any other documents required by Section 400.13 of the *Procedures*.

12. Indemnity, Insurance, and Sureties

12.1 Indemnity and Insurance - The Developer agrees to have every Contractor performing work on the Facilities fully comply with the all of the requirements in Exhibit D. To the extent that any indemnity or insurance coverage provided by any such Contractor does not fully indemnify the District for any and all claims as defined in Exhibit D, Developer agrees to indemnify, hold harmless, and defend the District, its directors, officers, employees, representatives, and authorized volunteers. Coverages required by Exhibit D shall be maintained throughout the term of this Agreement. Every Contractor shall file with the District prior to the commencement of any work under this Agreement, and as policy renewals occur, Certificates of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in full force and effect.

12.2 Performance and Payment Surety - Developer or its Contractor, as the case may be, shall furnish the District with a surety to secure the completion of and payment for the facilities. The amount of the performance surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The amount of the payment surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The surety instrument shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or irrevocable construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement. Each surety must be authorized in the State of California to issue the surety instrument provided. All surety instruments signed by an agent must be accompanied by a certified copy of the agent's authority to act.

12.3 Developer shall furnish the District with a Warranty bond or other surety instrument satisfactory to the District in the amount equal to twenty percent (20%) of the actual construction costs of MCWD infrastructure to secure the Developer's performance under Section 15, Warranties.

12.4 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction. The required performance and payment surety shall be delivered to the District prior to District approval of plans and specifications. No work may be commenced under this Agreement unless and until all required insurance certificates and performance and payment sureties are submitted to and approved by the District. The Warranty surety shall be provided prior to the District's acceptance of the facilities, and shall remain in effect for the duration specified in Section 15.1.

12.5 The performance surety shall remain in effect until final acceptance of the facilities by the District in accordance with Section 13.1. The payment surety shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the payment surety and no legal action was filed, (ii) satisfaction of all judgments against the

payment surety, and (iii) as otherwise provided by law. The warranty surety shall remain in effect until all warranties under this Agreement have expired.

13. Transfer of System Facilities to District after Completion

13.1 Developer shall execute and obtain all signatures of all other parties having any interest (including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of all facilities required by this Agreement to the District together with all real property, interests in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Development now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the facilities. Provided all conditions set forth in this Agreement are satisfied, the District shall accept the conveyance. All costs of construction of the facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for release of the payment surety under Section 12.5 shall have expired (or Developer shall provide other security acceptable to the District), and the title to all of the facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of any title insurance deemed necessary by the District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the facilities and to expand or improve, or interconnect the facilities with other adjacent facilities, as the District deems appropriate in its sole discretion.

14. Developer Assistance

14.1 Developer shall, both before and after the transfer, secure and provide any information or data reasonably needed by District to take over the ownership, operation and maintenance of the facilities.

15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities and all components thereof, will be in satisfactory working order and quality and free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier; and that the facilities and all components thereof have been constructed and installed in compliance with all approved specifications and as-built plans being provided to the District, and in accordance with applicable requirements of the District and any other governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or

replaced) the facilities will operate in good and sufficient manner for the purposes intended for (a) one (1) year after the latter of (i) the date of acceptance, (ii) the expiration of all lien enforcement periods, or (iii) proof of conveyance of facilities, or (b) 180-days from the date new facilities are subsequently re-installed, repaired, or replaced and inspected and accepted by the District (hereafter *replacement facilities*), whichever of (a) or (b) occurs last. The Developer shall remedy at the Developer's expense any failure to conform with any applicable requirement of the District, by any Contractor or any subcontractor or supplier at any tier, or any defect. If the Developer fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice by the District or any other person or entity, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Developer's expense and the Developer shall indemnify District for all such costs (including District's own labor costs) incurred.

15.2 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the District, if directed by the District; and

(3) Enforce all warranties for the benefit of the District, if directed by the District.

In the event any warranty under this section has expired, the District may bring suit at its expense to enforce its right as to any subcontractor's, manufacturer's, or supplier's legal obligation.

15.3 This Section 15 shall not limit the District's rights under the law with respect to latent defects, gross mistakes, or fraud.

16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

16.1 The Developer shall not allow any occupant or person to commence operations or use of any part of the facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose conditions or restrictions upon any consent to such prior service, such as posting a surety bond. District recognizes that the Development, and hence the facilities, may be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

17. Performance

17.1 Developer agrees to promptly design and construct the facilities and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the facilities have not been completed and accepted by District within thirty-six (36) months from the date of execution of this Agreement, such date may be extended for delays beyond Developer's control and without the fault or negligence or of the Developer or any Contractor or subcontractor or

supplier at any tier, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within thirty-six months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase, which shall incorporate the policies, fees and charges of the District then in effect as of the effective date of said Amendment. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

17.2 Responsibility for Work - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

18. Assignment

18.1 Neither party may assign their rights or obligations under this Agreement within its term without the written consent of the other party.

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19. Dispute Resolution Procedure

19.1 Disputes arising under this Agreement shall be resolved as provided in this section.

19.2 Prevention of Disputes/Meet and confer - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three (3) __ business or work days of the initial request. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors at the first available regularly scheduled Board Meeting. As a contract dispute, the matter shall be considered by the District Board of Directors in closed session under the Brown Act without the Developer or Contractor in attendance. If any disagreement remains unresolved for ten (10) days after consideration by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.3 below.

19.3 Mediation - Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection 19.2 Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.4.

Mediation shall be submitted first to a mediator with at least ten years experience with the issues in dispute. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County

Superior Court. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

19.4 Arbitration - If mediation fails to resolve the dispute, the parties shall select a single arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation.

Arbitration shall be commenced within thirty (30) days of the arbitration demand and concluded within 60 days of arbitration demand.

Arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

MCWD s' INITIALS_____ _____'S: INITIALS_____

20. Waiver of Rights

20.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

21. Notices

21.1 All notices, demands, or other communications, which this Agreement contemplates or authorizes, shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To District: Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, California 93933

To Developer: Monterey Bay Charter School
attn: Executive Director
1004 David Avenue
Pacific Grove, CA 93950

21.2 The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

22. Severability

22.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement. Stricken provisions shall not affect the legality, enforceability, or validity of the remainder of this Agreement so long as the stricken provision is replaced with a legal, enforceable and valid provision that conforms with the allocation of benefits and burdens to the respective parties and intent of the parties as expressed herein.

23. Paragraph Headings

23.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

24. Successors and Assignees

24.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

25. Integrated Agreement

25.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the others. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. Negotiated Agreement

26.1 This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

27. Attorneys Fees

27.1 If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court, in addition to any other relief granted. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

27.2 If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this Agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

28. Exhibits

28.1 All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

29. Disclaimer/Indemnity Regarding Public Works

29.1 District has not determined whether the project would be considered a "Public Works" project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a "Public Works" project. Developer is aware that if the project is considered a "Public Works" project, then Developer would have to pay "prevailing wages" under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

30. No Third Party Beneficiaries

30.1 There are no intended third party beneficiaries to this Agreement.

31. Compliance with Laws

31.1 Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

32. Counterparts

32.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

By: DEVELOPER,

_____
MBCS Properties, LLC
Coalition for Education Board Chair

By MARINA COAST WATER DISTRICT

_____
General Manager
Marina Coast Water District

EXHIBIT A

WATER ALLOCATION DOCUMENTATION

California State University
MONTEREY BAY
Extraordinary Opportunity

Campus Planning and Development
100 Campus Center
Mountain Hall A, Bldg. 84
Seaside, CA 93955-8001
831-582-3709
831-582-3545 fax
csumb.edu

December 8, 2016

Keith Van Der Maaten, General Manager
Mike Wegley, District Engineer
Marina Coast Water District
11 Reservation Road
Marina, California 93933

Subject: Water Allocation for the Monterey Bay Charter School – New School Project at California State University, Monterey Bay

Dear Mr. Van Der Maaten and Mr. Wegley,

It is our understanding that the Marina Coast Water District is requesting that the California State University, Monterey Bay (CSUMB) provide proof that CSUMB has approved a water allocation for the Monterey Bay Charter School – New School Project at California State University, Monterey Bay (MBCS) project from the CSUMB water allocation provided by the Fort Ord Reuse Authority (FORA). It has been suggested by the MCWD that an executed Lease Agreement that identifies the approved water allocation would be sufficient in providing proof of the approval.

The Draft Lease Agreement was approved by the California State University Board of Trustees (BOT) on September 21, 2016, which identified the agreed upon water allocation of 8.79 afy to be provided by the CSUMB from the water allocation provided by the FORA. In addition, the Initial Study/Mitigated Negative Declaration (IS/MND) for the project identified and analyzed this allocation, and the IS/MND determined the water supply was sufficient for the project. The IS/MND and project were also approved by the BOT on September 21, 2016, based on the IS/MND findings.

The Draft Lease Agreement has not been officially executed by CSUMB and MBCS as there is an unrelated issue regarding the Department of Education parcel. There is the potential that the lease may need to be slightly revised regarding this parcel; however, there are no issues or proposed revisions regarding the water allocation.

Therefore, in the absence of an executed Lease Agreement, we are submitting this letter to the MCWD to provide assurance that the water allocation identified in the approved Draft Lease Agreement and IS/MND is the water allocation that CSUMB would provide to the project from their existing allocation. We are hopeful that you will find the approval of these two documents by the BOT sufficient in satisfying the MCWD Board of Directors that the water allocation for the MBCS project has been approved and would be provided by the CSUMB water allocation provided by FORA.

Thank you for your consideration on this matter and keeping the MBCS on track for construction in spring 2017. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,

Kathleen Ventimiglia
Director for Campus Planning & Development

GROUND LEASE FOR THE MONTEREY BAY CHARTER SCHOOL PROJECTS

THIS GROUND LEASE (the "**Lease**") is made and entered into on _____ 2016 (the "**Effective Date**") by and between the Board of Trustees of the California State University, on behalf of California State University, Monterey Bay ("**Landlord**" **or "University"**), and MBCS Properties LLC **("Tenant".**) Each entity may be singularly referred to as a "party" and collectively as "parties."

RECITALS

WHEREAS, Landlord is the owner of certain unimproved real property in the County of Monterey, State of California, consisting of approximately eighteen (18) acres legally described in **Exhibit A** hereto (the "Premises.")

WHEREAS, Tenant desires to lease the Premises (together with certain appurtenant rights and easements) from Landlord for the purpose of constructing thereon and thereafter owning a public school and other appurtenant facilities as more particularly described on **Exhibit B** hereto (the "**Improvements**") and subleasing the Premises to the Charter School; and

WHEREAS, use of the Premises must be for purposes consistent with the mission of the California State University and California State University, Monterey Bay;

WHEREAS, Tenant has agreed to use the Premises in a manner which is consistent with such mission;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and incorporating by this reference the foregoing Recitals, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Lease, the following definitions shall apply:

"**Accelerated Trial**" shall mean a trial which complies with the dispute resolution procedures set forth in Section 17.3.

"**Acquisition Notice**" shall have the meaning ascribed to it in Section 12.7.

"**Additional Deposit**" shall have the meaning set forth in Section 2.9.

"**Affiliate**" shall mean any person controlling, controlled by or under common control with the person in question. As used in the foregoing, "control" and its related words means the ability to effectively direct the management decisions of the person in question.

"**Alterations**" shall have the meaning ascribed to it in Section 9.1.

"**Assessments**" shall mean any and all special assessments or levies or charges made by any municipal or political subdivision for local improvements.

"**Award**" shall have the meaning ascribed to such term in Section 11.8.

"**BOT**" shall mean the Board of Trustees of the California State University.

"**Building Tenant Lease**" shall mean an agreement between the Charter School, as sublessee of the Premises, and any person setting forth the terms and conditions of occupancy of a portion of the Improvements by such person. Building Tenant Leases are subject to the restrictions on subleases set forth in Article XII below.

"**Business Day**" shall mean a day other than a Saturday, Sunday, scheduled federal or state holiday or any other day on which commercial banks in the County are authorized or required by applicable Laws to close.

"**Capital Improvement Fund**" shall have the meaning set forth in Section 6.8.1.

"**Capital Improvement Plan**" shall have the meaning set forth in Section 6.8.4.

"**CEQA**" means the California Environmental Quality Act.

"Charter School" shall mean Monterey Bay Charter School or a successor public charter school .

"Charter School Lease" shall mean an agreement between Tenant and the Charter School setting forth the terms and conditions of occupancy of the entire Premises by such person. Charter School Leases are subject to the restrictions on subleases set forth in Article XII below.

"**City**" shall mean the City of Seaside, California.

"**Commencement of Construction**" shall mean the date on which Tenant has Commenced Construction.

"Commenced Construction" shall have the meaning set forth in Section 3.3.4.

"**Comparable Improvements**" shall mean improvements similar in kind and nature to the Improvements which are maintained in a first class manner and operated as a public school.

"**Completion of Construction, or date of issuance of final notice of completion** shall have the meaning set forth in Section 3.3.4 and shall mean April 2018,which date is 14 months after Commencement of Construction. [The schedule provided by the campus at the LDRC

meeting indicates that the plan check/approval process will take place from August to November 2016. Based upon the time it has taken on other projects to obtain approval from the State Fire Marshall and DSA (for disabled access review), the schedule should include 6 to 9 months for this process. As a result, the completion date for construction in the draft ground lease should be revised accordingly.]

"**Construction Commencement Date**" shall mean March 2017 or before, which date is 6 months after the Effective Date.

"**Construction Period**" shall mean the number of days required for construction of the Improvements as set forth in a construction schedule included and approved by the BOT as part of the Schematic Design Package submitted to Landlord and the BOT by Tenant during the Due Diligence Option Period. The Construction Period shall commence on the date on which Tenant has Commenced Construction, and end on the last day for Completion of Construction as shown in such construction schedule, extended only as permitted in (a), (b) and (c) of Section 3.3.2.

"**Construction Period Rent**" shall mean the rent payable during Construction Period, and shall be an amount equal to 50% of Annual Base Rent, prorated monthly.

"Construction Requirements" shall mean all applicable Laws, Landlord's construction requirements, a copy of which are attached hereto as **Attachment A-2 Exhibit C** and incorporated herein, the Design Guidelines, the Final Plans approved by the University and/or the BOT for the Improvements, and the requirements of this Lease applicable to the construction of the Improvements.

"**Construction Schedule**" shall mean the construction schedule included and approved by the BOT as part of the Schematic Design Package, or approved by delegated authority to the Chancellor, if applicable, as it may be modified with the approval of the BOT and/or the Chancellor, as appropriate.

"**Contractor**" shall have the meaning set forth in Section 3.4.

"**County**" shall mean the County of Monterey, State of California.

"**CPI Index**" shall mean the Consumer Price Index [All Urban Consumers] (base year 1982-84 = 100) for the San Francisco CMSA published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is changed so that the base is changed from 1982-84 = 100, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised. If there is no such replacement, then Landlord and Tenant shall select another price index which is satisfactory to both.

"**Demolition Account**" shall mean the account established pursuant to Section 2.12.4.

"**Design Guidelines**" shall have the meaning set forth in Section 3.2 hereof.

"**Design Professional**" shall mean a qualified professional architect or engineer, licensed in the State of California and in good standing, who may perform architectural or engineering services, including analysis of project requirements, creation and development of the project design, preparation of drawings, and specifications and bidding requirements.

"**Development Financial Plan**" shall have the meaning set forth in Section 3.2 hereof.

"**Effective Date**" shall mean the date set forth in the preamble of this Lease.

"**Event of Default**" shall have the meaning set forth in Section 15.2.

"**Facilities Planning**" shall mean the Facilities Planning and Management Office of the University, or similar University office then applicable as designated by the University. If the University does not have or designate a Facilities Planning and Management Office, then the office of the University President shall be deemed to the Facilities Planning and Management Office of the University until otherwise designated by the University.

"**Fair Market Rent**" shall mean the fair market rent for the Premises determined pursuant to Article XVIII for the purpose set forth in Section 4.3.2.

"Final Plans" shall mean the Construction Documents prepared in accordance with the Design Guidelines attached as **Attachment A-2 Exhibit C** upon final plan completion which are approved by Landlord as complete in all respects and are ready for use in construction.

"**First Rent Payment Date**" shall mean (a) the Rent Commencement Date if the Rent Commencement Date falls on the first day of a calendar month, and (b) the first calendar day of the first calendar month following the month in which the Rent Commencement Date occurs if the Rent Commencement Date occurs on a date other than the first calendar day of a calendar month.

"**Force Majeure**" shall mean a strike, act of God, inability to obtain labor or materials, governmental restriction, enemy action, civil commotion, fire, or similar cause, provided such similar cause is beyond the reasonable control of either Landlord or Tenant.

"**Ground Lease Non-Disturbance Agreement**" means that certain Subordination, Non-Disturbance and Attornment Agreement of even date herewith by and between the Landlord and Tenant to be entered into concurrently with the execution of this Lease, and any Subordination, Non-Disturbance and Attornment Agreements entered into with Tenant or any permitted successor Tenant in the future.

"**Guaranty**" shall have the meaning set forth in Section 2.8.

"**Hazardous Substance**" shall mean any material or substance (a) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under sections 25115, 25117 or 25122.7, or listed pursuant to section 25140, of the California Health and Safety Code, division 20, chapter 6.5 (Hazardous Waste Control law); (b) defined as a "hazardous substance" under section 26316 of the California Health and Safety Code, division 20,

chapter6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (c) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under section 25501 of the California Health and Safety Code, division 20, chapter 6.95, "Hazardous Substance" under section 25281 of the California Health and Safety Code, division 20, chapter 6.7 (Underground Storage of Hazardous Substances); (d) petroleum; (e) asbestos (f) polychlorinated biphenyls; (g) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, division 4, chapter 20; (h) designated as a "hazardous substance" pursuant to section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq., 33 U.S.C. § 1321, or listed pursuant to section 307 of the Clean Water Act (33 U.S.C. § 6903); (i) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 6901 et seq.); or (k) found to be a pollutant, contaminant, toxic or hazardous waste or toxic or hazardous substance in any reported decision of a federal or California state court, or which may give rise to liability under any federal or California common law theory based on nuisance or strict liability.

"**Improvements**" shall mean all improvements on the Premises to be constructed under the terms of this Lease and any replacements, reconstruction or restorations thereof during the Term.

"**Indemnified Parties**" means, with respect to Landlord, California State University, Monterey Bay, the State of California, the Board of Trustees of the California State University, and each of their officers, employees, representatives, agents, and volunteers. Indemnified Parties means, with respect to Tenant, the Tenant and each of its partners, officers, members, employees, representatives, and agents.

"**Initial Period**" shall mean the period commencing on the Effective Date and ending on the day before the date on which the Commencement of Construction occurs.

"**Initial Period Rent**" shall mean the rent payable during the Initial Period and shall be the sum of 25% of Annual Base Rent, prorated monthly.

"**Institutional Lender**" shall mean any of the following entities acting on its own or in a fiduciary capacity, so long as such entity (together with any entity directly or indirectly owning or controlling such entity or directly or indirectly owned, controlled by or under common control with such entity) has an aggregate combined net worth of at least $500 million: (a) a bank, savings and loan association, savings institution, trust company or national banking association, (b) a charitable foundation, (c) an insurance company, (d) a pension, retirement or profit-sharing trust or fund, (e) an investment company or business development company, as defined in the Investment Company Act of 1940, as amended, (f) a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or any investment advisor registered under the Investment Advisers Act of 1940, as amended, (g) a public employees' pension or retirement system or any other government agency supervising the investment of public funds, or (h) any entity directly or indirectly owning or controlling any of the foregoing or directly or indirectly owned, controlled by or under common control with any of the foregoing.

"**Landlord**" shall have the meaning ascribed to it in the preamble of this Lease and shall include any of Landlord's successors or assigns.

"**Laws**" shall mean all of the applicable statutes, ordinances, rules, codes, requirements, permits, regulations, or the like, of any governmental authority, whether federal, state, or local, or court.

"**Lease**" shall have the meaning ascribed to it in the introductory clause hereof.

"**Leasehold Mortgagee**" shall have the meaning ascribed to it in Section 14.2.

"**Lender Recognition Agreement**" shall mean an agreement in form and substance satisfactory to the Landlord between the Landlord, Tenant and a Leasehold Mortgagee pursuant to which the Landlord undertakes in favor of the Leasehold Mortgagee that in the event of a default by Tenant the Landlord will recognize the Leasehold Mortgagee as a direct lessee of the Landlord under the terms set forth in this Lease upon completion of a foreclosure or assignment in lieu of foreclosure under the applicable Trust Deed, on the condition that said Leasehold Mortgagee cures all defaults by Tenant under this Lease that are curable by such Leasehold Mortgagee after such foreclosure or acquisition of title.

"**Offer**" shall have the meaning ascribed to it in Section 12.6.

"**Official Records**" shall mean the Official Records of the County Recorder of the County.

"**Partial Taking**" shall have the meaning ascribed to it in Section 11.4 of this Lease.

"**Permitted Assignee**" shall mean any Person owned or controlled by Tenant or by the Person who owns Tenant.

"**Permitted Capital Expenditure(s)**" shall have the meaning set forth in Section 6.8.1.

"**Person**" shall mean any natural person, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and other entity.

"**Premises**" shall mean real property described in the first recital of this Lease.

"**Refusal Offer**" shall have the meaning ascribed to it in Section 12.7.

"**Rent**" means Annual Base Rent, and all other amounts to be paid by Tenant hereunder.

"**Rent Adjustment Date**" shall mean the fifth (5^{th}) anniversary of the First Rent Payment Date, and each date which falls on each four (4) year anniversary thereof.

"**Rent Commencement Date**" shall mean the Effective Date.

"**Right of First Refusal**" shall have the meaning ascribed to it in Section 12.7.

"**Scheduled Completion Date**" shall mean the date on which Completion of Construction is scheduled to occur as set forth in the construction schedule included and

approved by the BOT as part of the Schematic Design Package.

"**Schematic Design Package**" shall mean the materials required to be submitted to the BOT for approval pursuant to Section 3.2 hereof.

"**Security Deposit**" shall have the meaning set forth in Section 2.9.

"**Subtenant**" shall mean the Charter School as sublessee of the entire Premises pursuant to an executed Charter School Lease or any sub-sublessee or sub-subtenant of any space in the Improvements pursuant to an executed Building Tenant Lease.

"**Stoppage of Construction**" shall have the meaning set forth in Section 3.3.4.

"**Subtenant Improvements**" shall mean tenant improvements installed in any portion of the Improvements pursuant to the provision of an executed Charter School Lease or Building Tenant Lease.

"**Taking**" shall have the meaning ascribed to it in Section 11.2.

"**Taxes**" shall mean property taxes, fees, assessments and charges, water and sewer rates and charges and other similar governmental charges, whether general or special, ordinary or extraordinary, which may be levied, assessed, charged or imposed, or may become a lien or charge upon the Premises or any part or parts thereof, or upon Tenant's estate created by this Lease, including, without limitation, taxes on land, any buildings, any parking facilities or any other improvements now or hereafter at any time during the Term located at or on the Premises.

"**Tenant**" shall have the meaning ascribed to it in the preamble of this Lease and shall include any permitted assignee of the original Tenant.

"**Tenant's Interest**" shall mean Tenant's entire interest in (a) the Premises, (b) the Improvements, and (c) this Lease.

"**Term**" shall mean the term of this Lease as set forth in Section 2.4 of this Lease.

"**Third Party Delay**" shall mean any unanticipated delay not caused by either of the parties and which prevents either party from achieving conditions set forth in this Lease at no fault of their own, and shall include a delay caused by the occurrence of a Force Majeure Event. Upon the occurrence of any such delay, the delayed party shall promptly notify the other party in writing of such delay and shall meet to agree upon the appropriate extension of any deadlines set forth under this Lease as a result of such delay.

"**Total Taking**" shall have the meaning ascribed to it in Section 11.3.

"**Trust Deed**" shall have the meaning ascribed to it in Section 14.2.

"**University**" shall mean California State University, Monterey Bay.

"**University Delay**" shall mean delay caused by a University Entity (other than delays consistent with the established time frames for such University Entity to conduct reviews and/or

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date indicated next to their signatures below.

LANDLORD:

CALIFORNIA STATE UNIVERSITY MONTEREY BAY

Date Signed:_____ By:_____
Eduardo Ochoa, President

CALIFORNIA STATE UNIVERSITY

Date Signed:_____ By:_____
Elvyra F. San Juan, Assistant Vice Chancellor,
Capital Planning, Design and Construction

TENANT:

MBCS PROPERTIES LLC
a California limited liability company

Date Signed:_____ By:_____

Name and Title:_____

List of Exhibits:

A Legal Description of Premises
B Description of Improvements (75% Schematic Design Documents)
C Deliberately Left Blank
D Construction Documents

Attachment A-1 Operating Agreement for the Monterey Bay Charter School

Exhibit A Deliberately Left Blank
Exhibit B Athletics Shared Use Schedule
Exhibit C Conference & Events Services Room and Services Fees
Exhibit D MBCS Student Conduct/Access to CSU Monterey
Exhibit E CSUMB University Police Department
Exhibit F Landlord's Rules and Regulations

Attachment A-2 Agreement for the Oversight of Design and Construction of the Monterey Bay Charter School Project

Exhibit A University Obligations Scope of Services
Exhibit B MBCS Obligations
Exhibit C Design & Construction Requirements

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ATTACHMENT A-1

OPERATING AGREEMENT
FOR THE MONTEREY BAY CHARTER SCHOOL

This Operating Agreement is made and entered into as of _____ 2016 by and between the TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, which is the State of California acting in its Higher Education capacity (University) on behalf of California State University Monterey Bay, 100 Campus Center, Seaside, CA, 93955-8001 and the MONTEREY BAY CHARTER SCHOOL (MBCS,) a California nonprofit public benefit corporation.) University and MBCS are collectively referred to as the "Parties."

RECITALS

A. MBCS is a public charter school (grades K-8) operated by MBCS open to all students in good standing from Monterey, Santa Cruz and San Benito counties. MBCS is currently housed in facilities in Pacific Grove and Seaside, CA.

B. The California State University Board of Trustees (Trustees) has authorized the lease on the California State University Monterey Bay campus for MBCS or its affiliate to construct a permanent school building for use by MBCS. At the end of the lease term, all improvements will become University property. The Trustees directed the University to enter into an operating agreement with MBCS for the common use of facilities to support the educational objectives of each institution and for reimbursement for services provided by the University to MBCS.

C. The Parties desire to enter into other related agreements by which the Parties may agree that CSUMB will provide services or use of CSUMB's facilities to MBCS and MBCS will reimburse CSUMB for such services, including but not limited to the MBCS Ground Lease dated _____ 2016, and Agreement for the Oversight of Design and Construction of the MBCS Project dated _____ 2016 (collectively, "Related Agreements").

D. The Parties further desire to enter into a Design and Construction Agreement whereby CSUMB will provide to MBCS design and construction oversight services related to the construction of MBCS and will be reimbursed CSUMB for the cost thereof.

E. Concurrently with the execution of this Operating Agreement, the Parties or their affiliates have entered into (i) a ground lease (Ground Lease) for the permanent school facility site, a copy of which precedes this this attachment and (ii) the Oversight of Design & Construction Agreement, a copy of which is attached hereto as Attachment A-2.

THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

1. Term and Termination

The Operating Agreement is effective as of the date of the Certificate of Occupancy and shall remain in effect only so long as the Ground Lease is in effect. Termination of the Ground Lease shall constitute immediate termination of this Operating Agreement.

2. Fee and Cost Schedules

This Operating Agreement provides for the use of certain CSUMB resources. This Operating Agreement provides for the provision to MBCS of certain services by the University and for reimbursement of the cost of those services by MBCS at the rates set forth in Exhibit B Athletics Shared Use Schedule and Exhibit C Conference and Events Services Room and Service Fees. Such fees are subject to change.

3. Obligations of the University

3.1 Library

The University shall permit MBCS students, faculty and staff to use the resources of the CSUMB library at no charge to MBCS, including but not limited to, orientation regarding use of the library and pre-arranged class visits and special functions. Limits on such use is further defined by the MBCS Parent Handbook and policy manual, an excerpt of which is attached as Exhibit D and incorporated herein by this reference. Failure to adhere to the requirements of this exhibit, pay for lost books and otherwise abide by the rules for use of the CSUMB Library will terminate the right of the individual MBCS students, faculty or staff members to use the resources of the library.

3.2 Athletic Facilities

The University shall permit MBCS to use the following athletic facilities on an as-available basis: Outdoor natural turf and artificial turf playing fields for special events (MBCS Field Day and similar uses) at a cost consistent with CSUMB's rate structure for use determined by use of the standard Exhibit C Conference and Events Services Room and Service Fees, recognizing that MBCS is a 501(c)(3) not-for-profit institution. MBCS must schedule access to these facilities by contacting the offices of the Athletic Director a minimum of 30 days in advance.. Access to these facilities shall be limited to currently enrolled MBCS students, faculty and staff, and parents and invited guests. MBCS will provide its own staffing and equipment for such events. MBCS shall provide on-site supervision at all times during use of the athletic facilities. MBCS administrators, faculty and staff shall enforce University rules and policy on the appropriate use of the facilities and shall ensure that the MBCS students

abide by those rules, including but not limited to, wearing appropriate footwear and safety equipment.

3.3 Other CSUMB Venues

CSUMB facilities including the World Theater, University Center and others may be made available for use by MBCS for special events and with ample notice. Events must be scheduled through the CSUMB Conference and Events office. Rates will be determined by Exhibit C, recognizing that MBCS is a 503(c)(3) not-for-profit institution

3.4 Utilities

If MBCS is required by PG&E to connect to University utilities CSUMB will allow such connection(s.) All costs associated with enabling such connections will be borne by MBCS. CSUMB shall bill MBCS not less than monthly for the cost of such utility service for actual use. The University is not responsible for rate increases as occur by the utility. The University is not responsible for utility service failures.

3.5 Custodial, Maintenance, and Landscaping Services

MBCS is responsible for all Custodial, Maintenance and Landscaping services within the lease limits.

3.6 Network Services

MBCS is responsible for all data services.

3.7 Telecommunications services

MBCS is responsible for all telecommunications services.

3.8 Parking

MBCS is responsible for all parking policy and use on its leased land.

3.9 Mail Services

MBCS is responsible for all mail services to and from its campus.

3.10 University Police

The University shall provide police services to MBCS at the rate set forth in Exhibit E. Services are to include routing drive-by patrols and emergency calls. The Chief of Police of the University and the Director of MBCS shall mutually agree upon the manner in which police services will be rendered to MBCS.

CSUMB and MBCS shall agree on a camera surveillance system on the premises that

integrates with the current CSUMB system. All associated project-specific costs are to be borne by MBCS.

3.11 Water

MBCS has rights to no more than 8.79 acre-feet/year of water per year from CSUMB's water allocation. MBCS will negotiate with MCWD directly for water connections, water service, maintenance and billing. All costs associated with enabling such water service shall be borne by MBCS. The University is not responsible for rate increases as occur by the utility. The University is not responsible for utility service failures.

MBCS will monitor its water usage annually and review usage with CSUMB. One year after full build-out MBCS agrees to return any unused water allocation to CSUMB for future university uses.

4. Obligations of MBCS

4.1 Enrollment

MBCS agrees that the Average Daily Attendance (ADA) of MBCS during the term of the Ground Lease and this Operating Agreement shall be limited to five hundred eight (508) students. Further, MBCS will commit 7% of its enrollment for CSUMB employees as set forth in Attachment G.

4.2 Benefits

MBCS agrees to provide benefits to CSUMB as stated in Section 4.8 of this agreement.

4.3 Payment for Services

MBCS shall pay for services provided to MBCS by the University at the rates set forth in the Fee Schedules within thirty (30) calendar days of receipt by MBCS of an itemized invoice of services provided during the billing period. CSUMB shall submit invoices to MBCS for the services set forth in this Agreement. Any amount due and not paid within thirty (30) days shall incur a late fee of 3% of the unpaid amount.

4.4 Student Discipline

MBCS agrees to strictly enforce the Education Code provisions governing student behavior and the standards of acceptable student behavior set forth in the relevant portions of the MBCS Parent Handbook and policy manual, an excerpt of which is attached as Exhibit D, while on the CSUMB campus, including property leased to MBCS for MBCS. In addition MBCS faculty, staff and students are expected to adhere to the policies as set forth in Exhibit F Landlord's Rules and Regulations.

EXHIBIT B

LEGAL DESCRIPTION

EXHIBIT B

LEGAL DESCRIPTION

Certain real property situate in the County of Monterey, State of California, described as follows:

LEASE AREA A
Being a description for a Lease Area over a portion of the land shown as Parcel 11A as said parcel is shown on that map filed on August 13, 2004 in Volume 27 of Surveys at Page 90, Official Records of said County more particularly described as follows:

Beginning at the most northeasterly corner of said Parcel 11B; thence from said point of beginning, easterly along the boundary of said Parcel 11A;

1) South 87° 45' 00" East, 6.60 feet; thence departing the boundary of Parcel 11A

2) South 02° 14' 25" West, 300.84 feet; thence

3) South 17° 02' 04" West, 15.98 feet to a point on the southerly boundary of said Parcel 11A; thence along said southerly boundary

4) North 87° 46' 00" West, 2.59 feet to the southeast corner of said Parcel 11B; thence along said common boundary of said Parcels 11A and 11B

5) North 2° 15' 00" East, 316.29 feet to the **POINT OF BEGINNING**.

Containing 0.05 acres, more or less.

LEASE AREA B
Being a description for a Lease Area over a portion of the land shown as Parcel 11B as said parcel is shown on that map filed on August 13, 2004 in Volume 27 of Surveys at Page 90, Official Records of said County more particularly described as follows:

Beginning at the most northeasterly corner of said Parcel 11B thence from said point of beginning, southerly along the boundary of said Parcel 11B:

1) South 2° 15' 00" West, 316.29 feet; thence

2) North 87° 46' 00" West, 118.69 feet; thence

3) North 2° 14' 00" East, 87.03 feet; thence

4) North 87° 46' 00" West, 168.05 feet; thence

5) South 2° 14' 00" West, 87.03 feet; thence

6) North 87° 46' 00" West, 449.95 feet; thence

7) North 2° 14' 00" East, 87.03 feet; thence

8) North 87° 46' 00" West, 168.03 feet; thence

9) South 2° 14' 00" West, 87.03 feet; thence

10) North 87°46' 00" West, 100.37 feet; thence departing said boundary of Parcel 11B

11) North 2° 15' 15" East, 293.22 feet to a point on the northerly line of said Parcel B; thence following said boundary

12) South 87° 45' 00" East, 550.94 feet; thence

13) North 2° 15' 00" East, 23.36 feet; thence

14) South 87° 45' 00" East, 454.13 feet to the **POINT OF BEGINNING**.

Containing 6.33 acres, more or less.

LEASE AREA C

Being a description for a Lease Area over a portion of the land shown as Parcel 11B as said parcel is shown on that map filed on October 19, 1994 in Volume 19 of Surveys at Page 15, Official Records of said County more particularly described as follows:

Beginning at a point on the southerly boundary of said Parcel 1, said point being distant North 87° 45' 00" West, 60.00 feet from the most southeasterly corner of said parcel as shown on said map, Official Records of Monterey County; thence from said point of beginning along the boundary of said parcel:

1) North 87° 45' 00" West, 454.13 feet; thence

2) South 2° 15' 00" West, 23.36 feet; thence

3) North 87° 45' 00" West, 550.94 feet; thence departing the boundary of said Parcel 1

4) North 2° 15' 15" East, 508.10 feet; thence

5) North 73° 37' 35" East, 12.56 feet; thence

6) South 87° 46' 30" East, 978.40 feet; thence

7) South 49° 22' 29" East, 27.21 feet; thence

8) South 2° 15' 00" West, 472.29 feet to a point on the southerly boundary of said Parcel 1; thence

9) North 87° 45' 00" West, 6.60 feet to the **POINT OF BEGINNING.**

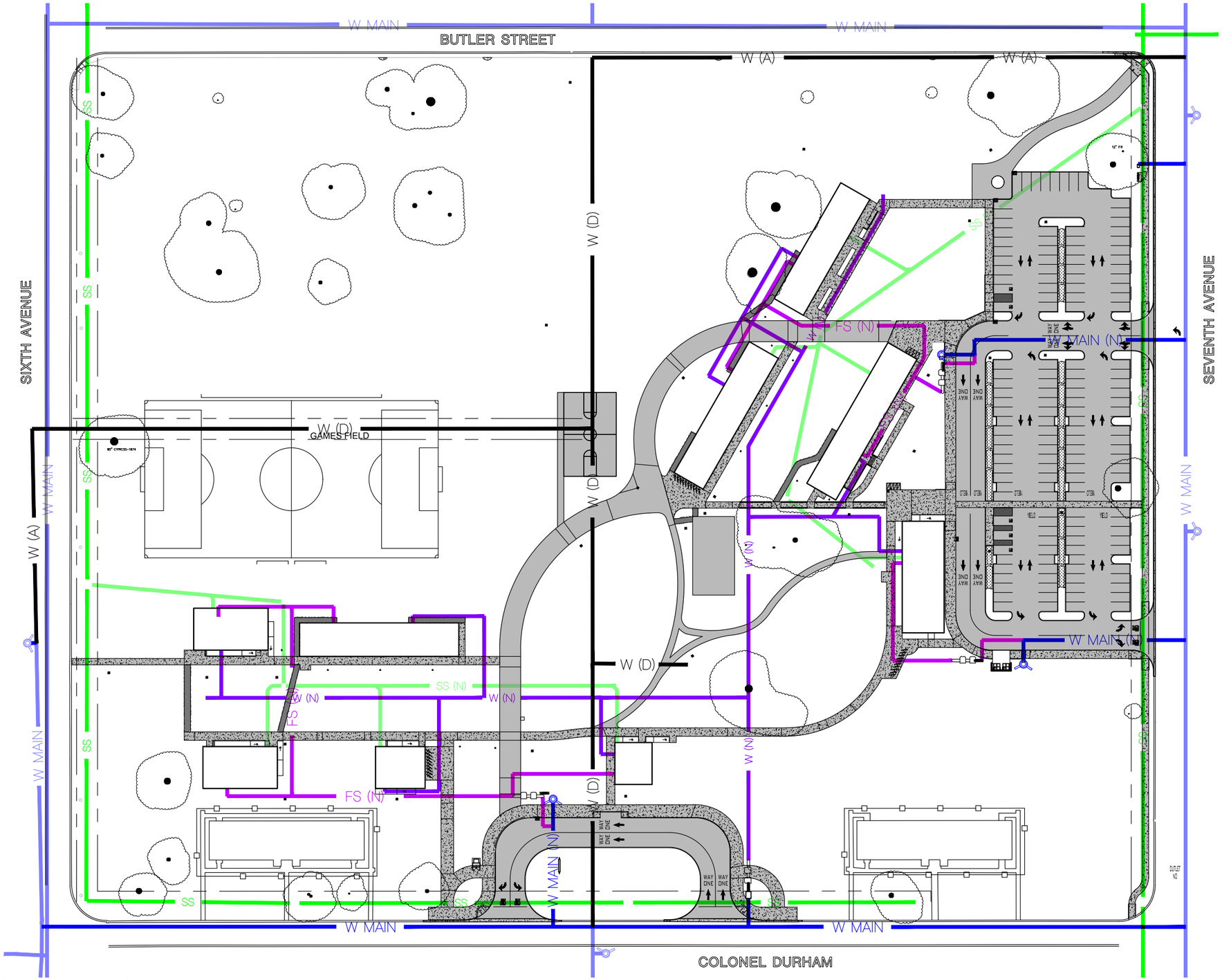
Containing 11.65 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof

END OF DESCRIPTION

EXHIBIT C

MAP OF DEVELOPMENT



LEGEND

W (D)	EXISTING WATER MAIN TO BE DEMOLISHED, REMOVED AND PROPERLY DISPOSED OF BY MBCS
W (A)	EXISTING WATER MAIN TO BE DEMOLISHED OR CUTOFF, FILLED WITH CONCRETE AND ABANDONED IN PLACE BY MBCS
FS (N)	NEW PRIVATE FIRE WATER LINE TO BE CONSTRUCTED AND MAINTAINED BY MBCS
W (N)	PRIVATE POTABLE WATER LINE TO BE CONSTRUCTED AND MAINTAINED BY MBCS.
W MAIN	EXISTING WATER MAIN OWNED AND MAINTAINED BY MCWD
W MAIN	NEW WATER MAIN TO BE CONSTRUCTED BY MBCS AND CONVEYED TO MCWD
SS	EXISTING SANITARY SEWER OWNED, MAINTAINED AND OPERATED BY MCWD
SS (N)	NEW PRIVATE SANITARY SEWER BUILDING LATERAL CONSTRUCTED AND MAINTAINED BY MBCS
	EXISTING MCWD EASEMENT
	NEW EASEMENT CONVEYED TO MCWD
	FIRE HYDRANT
	DOMESTIC OR FIRE WATER BACKFLOW PREVENTION DEVICE

NORTH

SCALE 0 50 100 200 FEET

MONTEREY BAY CHARTER SCHOOL NEW SCHOOL SITE PLAN, SEASIDE CA

EXHIBIT

C

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS for Infrastructure Agreements

1. Workers' Compensation and Employer's Liability Insurance –

a. The Developer shall require every Contractor to certify that it and all of its subcontractors are aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of any work under this Agreement.

b. The Developer shall require every Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

c. The Contractor shall provide employer's liability insurance in the amount of at least $1,000,000 per accident for bodily injury and disease.

2. Definitions – For purposes of this Exhibit, the following terms shall have the following respective meanings:
"Claim" - shall be used collectively to refer to and include any and all claims, demands, causes of action, damages, costs, attorneys' fees, expert fees, court costs, expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever.

3. Indemnification - To the fullest extent permitted by law, the Developer will require every Contractor to indemnify, hold harmless, and defend District, its directors, officers, employees, representatives, and authorized volunteers (collectively, the "indemnitees"), and each of them from and against:

a. Any claim, including, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except to the extent caused by the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;

b. Any claim arising out of, resulting from, or relating in any way to a violation of any

governmental law or regulation, compliance with which is the responsibility of the Contractor;

c. Any claims (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any indemnitee may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations to the Developer for work to be performed under this Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, expert fees, and court costs, incurred by an indemnitee in any lawsuit to which the indemnitee is a party.

d. Contractor acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Contractor under this Agreement shall specifically include any claim involving, arising out of or related to MEC.

The Developer will require their Contractor to pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, relating to any claim.

The Developer will require their Contractor to reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor's indemnification obligation shall not be limited to the proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers from any insurance required to be provided under this Agreement.

4. Commercial General Liability and Automobile Liability Insurance - The Developer will require their Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial ***General Liability*** Coverage (Occurrence Form CG 0001)

2. Insurance Services Office ***Automobile Liability*** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Consultant shall maintain limits no less than the following:

1. ***General Liability*** - Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general

aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

2. ***Automobile Liability*** - One million dollars ($1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion,

collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

5. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be disclosed in writing to and approved by the District.

6. Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the District.

7. Munitions and Explosives Coverage (MEC) - The Developer will require their Contractor to maintain insurance that includes coverage for services and work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Contractor related in any way to work performed by it on behalf of the Marina Coast Water District.

8. Builder's Risk Insurance - The Developer or the Developer's Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified by the District, to insure against such losses until final acceptance of the work by the District. Such insurance shall include[1] explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor by the Developer shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

9. Waiver of Rights of Subrogation - The Developer will require their Contractor's insurer to waive all rights of subrogation against the District, its directors, officers, employees, or authorized volunteers.

10. Evidences of Insurance - Prior to the commencement of construction activities under this Agreement, the Developer will require their Contractor to file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Developer will require their Contractor, upon demand of the District, to deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator

11. Sub-Contractors' Required Insurance Requirements - In the event that the Contractor employs sub-contractors as part of the work to be performed under this Agreement, it shall be the Developer's responsibility to require and confirm that every Contractor requires each of its sub-contractor to meet the same minimum insurance requirements specified in this Exhibit for every Contractor.