

EXHIBIT D-1

SPECIAL CONDITIONS

1. Mitigation Measures

Developer shall comply with all applicable mitigation measures, as follows, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.).

Mitigation Monitoring and Reporting Program attached hereto as Appendix A and incorporated herein.

2. Permits, Certificates, Licenses, Fees, Approvals

2.1. Payment for Permits, Certificates, Licenses, Fees, Approvals.

As required in the General Construction Provisions, the Developer shall secure and pay for all permits, licenses and certificates necessary for the prosecution of the Work with the exception of the following:

DSA inspector fees, soils testing, special inspections, and IOR fees.

With respect to the above listed items, Developer shall be responsible for securing such items; however, District will be responsible for payment of these charges or fees, but only for the actual and direct costs (without markup or additional fees). Developer shall notify the District of the amount due with respect to these items and to whom the amount is payable. Developer shall provide the District with an invoice and receipt with respect to such charges or fees. In the alternative, District may pay such costs directly to DSA.

3. Disabled Veterans Business Enterprise

This Project uses or may plan to use funds allocated pursuant to the State of California School Facility Program for the construction and/or modernization of school buildings. Therefore, Section 17076.11 of the Education Code requires the District to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the District on projects that receive state funding and the Developer must submit the Disabled Veteran Business Enterprise Participation Certification to the District with its executed Agreement, identifying the steps Developer took to solicit DVBE participation in conjunction with this Contract.

4. Modernization Projects

4.1 Access.

Access to the school buildings and entry to buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with District and onsite District personnel before Work is to start. Unless agreed to otherwise in writing, only a school custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while school is in session. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Developer's Work, the overtime wages for the

custodian will be paid by the Developer, unless at the discretion of the District, other arrangements are made in advance.

4.2 Master Key.

Upon request, the District may, at its own discretion, provide a master key to the school site for the convenience of the Developer. The Developer agrees to pay all expenses to re-key the entire school site and all other affected District buildings if the master key is lost or stolen, or if any unauthorized party obtains a copy of the key or access to the school.

4.3 Maintaining Services.

The Developer is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the District. Developer shall provide temporary services to all facilities interrupted by Developer's Work.

4.4 Maintaining Utilities.

The Developer shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.

4.5 Confidentiality.

Developer shall maintain the confidentiality of all information, documents, programs, procedures and all other items that Developer encounters while performing the Work. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes, without limitation, all student, parent, and employee disciplinary information and health information.

4.6 Work during Instructional Time.

Developer affirms that Work may be performed during ongoing instruction in existing facilities. If so, Developer agrees to cooperate to the best of its ability to minimize any disruption to school operations and any use of school facilities by the public up to, and including, rescheduling specific work activities, at no additional cost to District.

4.7 No Work during Student Testing.

Developer shall, at no additional cost to the District and at the District's request, coordinate its Work to not disturb District students including, without limitation, not performing any Work when students at the Site are taking State or Federally-required tests.

5. Substitution for Specified Items

5.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Developer may, unless otherwise stated, offer any material,

- 5.4.2. The Developer provides the same warranties and guarantees for the substitute that would be provided for that specified;
- 5.4.3. The Developer shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Developer without a change in the Contract Price or Contract Time;
- 5.4.4. The Developer shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
- 5.4.5. The Developer shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Developer agrees to execute a deductive Change Order to reflect that credit.
- 5.5. In the event Developer furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Developer.
- 5.6. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- 5.7. Developer shall be responsible for any costs the District incurs for professional services, DSA fees, or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods. District may deduct those costs from any amounts owing to the Developer for the review of the request for substitution, even if the request for substitution is not approved. District, at its sole discretion, shall deduct from the payments due to and/or invoice Developer for all the professional services and/or DSA fees or delay to the Project Schedule, if applicable, while DSA reviews changes for the convenience of Developer and/or to accommodate Developer's means and methods arising herein.

6. Federal Funds

As this Project is funded in whole or in part by federal funds, Developer and all Subcontractors are subject to civil or criminal prosecution for any violation of the federal False Claims Act set forth under section 1001 of title 18 and section 231 of title 31 of the United States Code.

THE FOLLOWING PROVISIONS ARE ADDED AS SECTION 27 TO EXHIBIT D TO THE FACILITIES LEASE, THE GENERAL CONSTRUCTION PROVISIONS:

27. Federal Labor, Wage & Hour, Apprentice, And Related Provisions

27.1 Minimum Wages

Exhibit

[Name of] Project

DWK DMS 3366164v1

The Davis-Bacon Act and 29 CFR parts 1 through 7 shall apply if the Project is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution.

27.1.1 All laborers and mechanics employed or working upon the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) , the full amount of wages and bona fide fringe benefits, or cash equivalents thereof, due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Developer and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period, but not less often than quarterly, under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of Work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing Work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which Work is performed. The wage determination including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Developer and its Subcontractors at the Site of the Work in a prominent and accessible place where it can be easily seen by the workers.

27.1.2 Any class of laborers or mechanics, including helpers, and which is to be employed under the Contract which is not listed in the wage determination shall be classified in conformance with the wage determination. An additional classification and wage rate and fringe benefits will not be approved unless the following criteria have been met:

27.1.2.1 The Work to be performed by the classification requested is not performed by a classification in the wage determination; and

27.1.2.2 The classification is utilized in the area by the construction industry; and

27.1.2.3 The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

27.1.3 If the Developer and the laborers and mechanics to be employed in

the classification (if known), or their representatives, and the District agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Developer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

27.1.4 In the event the Developer, the laborers or mechanics to be employed in the classification or their representatives, and the District do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Developer shall provide the questions, including the views of all interested parties and the recommendation of the District, to the District for the District's review and referral to the Administrator for determination.

27.1.5 The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5(a)(1)(ii)(B) or (C), shall be paid to all workers performing Work in the classification under this Contract from the first day on which Work is performed in the classification.

27.1.6 Whenever the minimum wage rate prescribed in any applicable wage determination for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Developer shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

27.1.7 If the Developer does not make payments to a trustee or other third person, the Developer may consider, as part of the wages of any laborer or mechanic, the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Developer, that the applicable standards of the Davis-Bacon Act have been met. If the Secretary of Labor so requires, the Developer to shall aside in a separate account sufficient assets to meet obligations under the plan or program.

27.2 Withholding

District shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Developer under this Contract or any other Federal contract with the same Developer, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Developer, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Developer or any Subcontractor the full amount of wages required by the Contract. In the event of Developer's or any Subcontractors' failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the District may, after written notice to the Developer, sponsor, applicant, or owner, take such action as it deems necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

27.3 Payrolls and basic records

27.3.1 Payrolls and basic records relating thereto shall be maintained by the Developer during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the Site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Developer shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Developers or Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

27.3.2 The Developer shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the District. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information shall be submitted on a form acceptable to the District. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Developer is responsible for the submission of copies of payrolls by all Subcontractors. Developer and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the District, the Developer, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. Developer may require a Subcontractor to provide addresses and social security numbers to the Developer for its own records, without weekly submission to the District or other government agency.

27.3.3 Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Developer or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

27.3.3.1 That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5.

27.3.3.2 That the appropriate information is being maintained

under 29 CFR 5.5 (a)(3)(i) of Regulations, 29 CFR part 5.

27.3.3.3 That such information is correct and complete.

27.3.3.4 That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly.

27.3.3.5 That no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

27.3.3.6 That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into or applicable to the Contract.

27.3.3.7 The weekly submission of a properly executed certification in the form set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(B).

27.3.3.8 The falsification of any of the above certifications may subject the Developer or one or more Subcontractors to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

27.3.3.9 The Developer or Subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the District or the federal Department of Labor, and shall permit representatives to interview employees during working hours on the job. If the Developer or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Developer, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

27.4 Apprentices and trainees

27.4.1 Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in an eligible apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where

appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job Site in any craft classification shall not be greater than the ratio permitted to the Developer as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Developer is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Developer's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Developer will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

27.4.2 Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to Work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration

withdraws approval of a training program, the Developer will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

27.4.3 Equal employment opportunity

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

27.5 Compliance with Copeland Act requirements

Developer shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

27.6 Subcontracts

The Developer or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Developer shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the Contract clauses in 29 CFR 5.5.

27.7 Contract termination: debarment

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Developer and a Subcontractor as provided in 29 CFR 5.12.

27.8 Compliance with Davis-Bacon and Related Act requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

27.9 Disputes concerning labor standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Developer (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

27.10 Certification of eligibility

27.10.1 By entering into this Contract, the Developer certifies that neither it (nor he or she) nor any person or firm who has an interest in the Developer's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

27.10.2 No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

27.10.3 Developer or Subcontractors shall be subject to penalty for making false statements as prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

27.11 Clauses Mandated by Contract Work Hours and Safety Standards Act

As used in the following paragraphs, the terms laborers and mechanics include watchmen and guards.

27.11.1 Overtime requirements

No Developer or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

27.11.2 Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in the foregoing paragraph the Developer and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Developer and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the foregoing paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to Work in excess of the standard workweek of forty hours without payment of the overtime wages required by the foregoing paragraph.

27.11.3 Withholding for unpaid wages and liquidated damages

The District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Developer or Subcontractor under the Contract or any other Federal contract with the same Developer, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Developer, such sums as may be determined to be necessary to satisfy any liabilities of such Developer or Subcontractor for unpaid wages and liquidated damages as provided in the foregoing paragraph.

27.11.4 Subcontracts

The Developer or Subcontractor shall insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (b)(4) and also a clause requiring each Subcontractor to include these clauses in any lower tier subcontracts. Developer shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (b)(4).

APPENDIX A

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