

The Regents of the University of California

**COMMITTEE ON GROUNDS AND BUILDINGS  
COMMITTEE ON FINANCE**

July 21, 2016

The Committees on Grounds and Buildings and Finance met on the above date at UCSF–Mission Bay Conference Center, San Francisco.

Members Present: Representing the Committee on Grounds and Buildings: Regents Makarechian, Pérez, Schroeder, Sherman, Varner, and Zettel; Ex officio members Lozano and Napolitano; Advisory member Hare; Staff Advisors Richmond and Valdry

Representing the Committee on Finance: Regents Island, Kieffer, Makarechian, Ortiz Oakley, Ramirez, and Reiss; Ex officio members Lozano and Napolitano; Advisory member Hare; Staff Advisors Richmond and Valdry

In attendance: Regents Brody, De La Peña, Lansing, and Pattiz, Regents-designate Lemus, Mancía, and Monge, Faculty Representative Chalfant, Secretary and Chief of Staff Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Vacca, Provost Dorr, Executive Vice President and Chief Financial Officer Brostrom, Executive Vice President and Chief Operating Officer Nava, Senior Vice President Henderson, Vice Presidents Brown, Budil, Duckett, and Humiston, Chancellors Block, Blumenthal, Dirks, Hawgood, Khosla, Leland, Wilcox, and Yang, Acting Chancellor Hexter, and Recording Secretary McCarthy

The meeting convened at 9:10 a.m. with Committee on Grounds and Buildings Chair Makarechian presiding.

**AMENDMENT OF BUDGET, AMENDMENT OF THE SCOPE, APPROVAL OF REVISION OF THE COMMERCIAL TERMS OF THE PROJECT AGREEMENT AND RELATED ACTIONS, APPROVAL OF EXTERNAL FINANCING, AMENDMENT OF THE LONG RANGE DEVELOPMENT PLAN, AND APPROVAL OF DESIGN FOLLOWING ACTION PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, 2020 PROJECT, MERCED CAMPUS**

1. The President of the University recommended that the Committees on Grounds and Buildings and Finance recommend to the Regents that:
  - A. The 2016-17 Budget for Capital Improvements and the Capital Improvement Program be amended to include the following project:

From: Merced, 2020 Project (2020 Project) – \$1,142,850,000 to be funded from external financing (\$600 million), developer funding (\$385.76 million), and campus funds (\$157.09 million).

To: Merced, 2020 Project (2020 Project) – \$1,338,480,000 to be funded from external financing (\$600 million), developer funding (\$590.35 million), and campus funds (\$148.13 million).

B. The project scope of the 2020 Project be amended as follows:

From: Construction of approximately 918,900 assignable square feet of academic, administrative, research, recreational, undergraduate and graduate residence, staff/faculty residence, and student services buildings, as well as infrastructure, outdoor recreation facilities and open space, landscaping, roadways, and parking.

To: Construction of approximately 789,892 assignable square feet of academic, administrative, research, recreational, undergraduate residence, staff/faculty residence, and student services buildings, as well as infrastructure, outdoor recreation facilities and open space, landscaping, roadways, and parking.

C. The revised commercial terms of the 2020 Project Agreement be approved as summarized in Attachment 1.

D. The President be authorized to obtain external financing supported by the general revenues of the Merced campus in an amount not to exceed \$550 million (financing to be issued), plus related financing costs. The President be authorized to utilize already obtained external financing in an amount not to exceed \$50 million (previously issued Century Bonds). The President shall require that:

- (1) Interest only, based on the amount drawn down, shall be paid on the outstanding balance during the construction period.
- (2) For the \$200 million associated with non-State supportable space, as long as the debt is outstanding, the general revenues of the Merced campus shall be maintained in amounts sufficient to pay the debt service and to meet the requirements of the authorized financing.
- (3) For the \$400 million associated with State supportable space, the primary source of repayment for the external financing shall be from State General Fund appropriations, pursuant to the Education Code section 92495 et seq. Should State General Fund appropriation funds not be available, the President shall have the authority to use any legally available funds to make debt service payments.

- (4)     The general credit of the Regents shall not be pledged.
2.     The President recommended that, following review and consideration of the environmental consequences of the proposed 2020 Project, as required by the California Environmental Quality Act (CEQA), including any written information addressing this item received by the Office of the Secretary and Chief of Staff no less than 24 hours in advance of the beginning of this Regents meeting, testimony or written materials presented to the Regents during the scheduled public comment period, and the item presentation, the Committee on Grounds and Buildings:
  - A.     Determine that the environmental consequences of proposed Long Range Development Plan (LRDP) Amendment are adequately analyzed in the certified 2009 LRDP Environmental Impact Report as updated in Addenda #6 and #7.
  - B.     Having reviewed and considered the UC Merced 2009 LRDP Final Environmental Impact Statement/Environmental Impact Report and Addendum #7 thereto, adopt the CEQA Findings.
  - C.     Amend the 2009 LRDP to re-designate 27.55 acres as Campus Mixed Use, amend the boundaries of the 2020 Project Site, and make other conforming changes to the 2009 LRDP.
  - D.     Approve the design of the 2020 Project, Merced Campus.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Committee on Grounds and Buildings Chair Makarechian recalled that the UC Merced 2020 Project had the goal of increasing the campus' capacity to 10,000 students by 2020. The Regents approved the budget in November 2015. The campus received two proposals by April 2016, but both exceeded that budget. The campus revised the project's technical requirements and awarded a bid in June 2016, with anticipated signing of the Project Agreement in August 2016. The initial budget was \$1,142,850,000 and the final proposed budget would be \$1,338,480,000, an increase of \$195 million. The cost increase would be financed by the developer team. The square footage was reduced from 918,900 assignable square feet (asf) to 789,892 asf, a reduction of about 129,000 asf. Graduate student housing containing 200 beds was eliminated. The payment and performance bond was increased to 100 percent, which would provide very good protection for the University. He asked the campus to explain these changes.

Regent Pérez asked the campus to address the request of a student during the public comment period for a multicultural center.

Chancellor Leland explained that by developing a long-range financial model UC Merced was able to make strategic choices regarding its use of very limited resources. The fiscal rigor that accompanied development of a capital strategy based on both affordability and life-cycle costs influenced the campus' decision-making in positive ways.

Chancellor Leland described the physical layout of the UC Merced campus and the 2020 Project. The campus is divided by an irrigation canal and also has a small lake south of the lower campus. These features represented challenges for designers, particularly since a key criterion for judging bids was the goal of creating a unified campus.

The winning developer team's creative approach achieved all design objectives. Little Lake, rather than being a design afterthought, would be the new heart of UC Merced. New buildings would ring the Lake with classrooms, and residential and student life facilities. The Lake would be flanked by a central dining hub that could accommodate special events and informal gatherings. The new teaching and research buildings would be four stories tall. Residential buildings would blend living and learning, with residential top floors and ground floor classrooms that open onto public spaces for group interaction. To supplement campus athletic and recreational facilities, individual recreation courts would be adjacent to residence halls. Mixed-use spaces would support multiple functions. For instance, residential buildings would provide space not just for housing and classrooms, but also for student support functions including multicultural spaces desired by students. Buildings have been designed so that they could be re-purposed in the future with minimal investment.

The 2020 Project would also help UC Merced achieve its sustainability goals. The 2020 Project buildings would demonstrate at minimum an energy efficiency that would meet President Napolitano's carbon neutrality goals and would achieve at least a Leadership in Energy and Environmental Design (LEED) Gold certification. Chancellor Leland expressed confidence that by 2020, when combined with other campus energy-savings initiatives, these sustainability features would enable UC Merced to be among the world's first research universities to achieve net-zero energy usage and carbon neutrality.

To complete the ambitious 2020 Project in a timely manner, the campus asked the developer to meet an aggressive construction schedule. The Project would be completed in three phases, in a way that minimizes disruption to the campus. Delivery of the first housing, central dining, and academic classrooms would occur in fall 2018. One year later in 2019, a laboratory building, additional housing, and recreational facilities would be added. By fall 2020, substantial completion of the entire project would have been achieved, nearly doubling the size of the campus in half the time it took to build the initial phase.

Executive Vice President and Chief Financial Officer Brostrom stated that his team had worked very closely with Chancellor Leland's team at every stage of this effort and was pleased with the outcome. To move forward, the University would execute a Project Agreement with Plenary Properties Merced, with financial close anticipated as soon as August 10, a month earlier than anticipated. Mr. Brostrom described the project changes. The cost of design and construction was \$200 million more than initially projected; however, the cost of financing would be substantially less than projected. In addition, ongoing costs of operation and maintenance would be substantially less than projected, a key advantage of using the design-build-finance-operate-maintain (DBFOM) delivery method. These changes would not affect the University's overall ability to afford the project. The availability payment, the amount the campus would pay the developer for both debt service on the initial construction and design and ongoing operations and maintenance, was \$49.7 million annually, 2.5 percent below the \$51 million upset limit. This

would mean that, in addition to the bonds the campus would be supporting, the overall cost of ownership had decreased from \$105 million annually to \$103 million annually. The lower cost of financing, and the lower cost of operations and maintenance would offset the higher cost of design and construction.

Mr. Brostrom highlighted changes to the financial structure referred to earlier by Committee Chair Makarechian. The developer would post a payment and performance bond for 100 percent of construction costs. The initial milestone and final acceptance payments had a step function under which the University would release money to the developer as facilities were delivered. However, given the advantage the University had in its cost of financing, it was able to save substantially by moving to a more phased progress payment schedule. The University would still not release any money until the first \$150 million of construction was completed, an increase over the \$100 million in the original schedule. The developer would retain considerable exposure and accountability throughout the project. Mr. Brostrom affirmed his belief that this approach would deliver a capital project in a timely and cost-effective manner and would be a noteworthy way for the University to add substantial capacity. This method would be considered for housing projects at several other campuses.

Chancellor Leland explained that, after the campus had received bids, it engaged in a best and final offer process, which enabled the campus to keep the project affordable by strategically refining the program. The campus needed flexible space that could later be cost-effectively shifted as the campus matures. It reviewed program specifications to determine what features were necessary. The campus decided to combine some functions that had originally been in separate buildings. In addition, since the Request for Proposals (RFP) process, some new opportunities had presented themselves. The campus received a \$10 million gift of land very close to campus, a better site for public-private developed graduate student housing that could also include faculty housing, childcare facilities, and other amenities. In the area of public safety, the campus decided it would be more cost-effective to renovate an existing small facility and strategically place public safety officers throughout the campus, rather than have public safety functions isolated at the edge of the campus in a separate facility. Having public safety officers more distributed throughout the campus would be an improvement that would fit the campus' community policing philosophy. These program changes did not sacrifice the project's main goals, the quality of the design, or the campus' ability to accommodate enrollment growth. Chancellor Leland assured Regent Pérez that the project included space for a multicultural center.

Mr. Brostrom said the Regents were being asked to approve changes to the project budget and scope, and a formal amendment to the Long Range Development Program to redesignate 27 acres to the project. When the RFP was released, the University did not fully own that land. Since that time, the University has acquired ownership of the land, which provides a better option for relocating parking. The Committee on Grounds and Buildings was also being asked to approve the design of the 2020 Project.

Committee Chair Makarechian commented that this project would accomplish the goal of accommodating UC Merced's enrollment growth to 10,000 students. He noted that approval of

this budget would not include any automatic budget augmentations. Every change in scope or increase in cost would have to be brought back to the Regents for approval.

Regent Sherman asked if the budget included interest both for the campus and the developer. Mr. Brostrom answered in the affirmative. Regent Sherman asked for clarification of the accounting of the interest savings that had been referred to earlier. Mr. Brostrom explained that original projections included a 5.5 percent financing rate. In fact, the developer could borrow at 4.5 percent, so more could be financed at an overall lower cost. Vice Chancellor Daniel Feitelberg added that the operations and maintenance costs also proved to be lower than originally expected. Regent Sherman commented that the reduced maintenance and operations costs were the main reason the campus' annual cash flow would remain about the same. He asked if the University's total outlay of money on a discounted cash flow basis had been calculated for the original budget compared with the revised budget. Under the revised budget, the University would pay more up front. Mr. Feitelberg said that the faster pace at which the campus would make progress payments was factored into the total cost of ownership described earlier by Mr. Brostrom. The campus had assumed a slightly faster issuance of commercial paper over time. The overall budgeting analysis to determine the annualized cost was on the basis of life-cycle infrastructure management and the cost of design, construction, financing, operations, and maintenance for both the developer and the campus.

Regent Sherman asked why the construction costs had increased. Mr. Feitelberg responded that the biggest component of the increase was infrastructure cost, which the campus had anticipated to be \$200 million, but which would cost \$300 million. Regent Sherman asked if the current low interest rates could be locked in and if there was a time within which the bonds would have to be issued. Mr. Feitelberg said that the credit spread to the U.S. Treasury benchmark that the developer provided in the bid was locked in as of this date. The U.S. Treasury benchmark would be locked in as of financial closing, which was expected to be August 10. Committee Chair Makarechian added that the effective fixed interest rate would be 4.45 percent for 39 years.

Regent Sherman asked about the additional cost of aiming for LEED Platinum certification compared with LEED Gold certification. Chancellor Leland said there would be a cost differential and the campus had ways to reach its sustainability goals that would be less expensive than building to a LEED Platinum standard. Mr. Feitelberg commented that the campus planned to create as much energy efficiency through the 2020 Project as the campus could reasonably afford. The fact that the campus owns its central plant means that it owns its energy and sustainability future. The campus is developing strategies to continue to achieve its triple net-zero objectives by 2020, including net energy and carbon neutrality. Chancellor Leland added that those strategies would include biogas and additional solar energy that could be accommodated through the campus' existing central plant.

Regent Sherman asked if the planned housing would have communal kitchens where students could cook their own food. Chancellor Leland said the campus had limited facilities in the residence halls for cooking, as they would be too expensive. The campus has a food pantry for students in need and local fresh produce at significantly reduced cost.

Regent Varner complimented Committee Chair Makarechian on his contributions to this project.

Chairman Lozano recognized the progress accomplished on the 2020 Project and its vision of role of the University in the Central Valley. She congratulated the entire team, including the Chancellor and her campus team, Mr. Brostrom's office, the Regents, and the local Merced community.

Upon motion duly made and seconded, the Committee on Grounds and Buildings approved the President's recommendation in 2. and the Committees voted to present the recommendation in 1. to the Board.

Chancellor Leland invited the Regents to the October groundbreaking for the 2020 Project.

The meeting adjourned at 9:40 a.m.

Attest:

Secretary and Chief of Staff

Additions shown by underscoring; deletions shown by strikethrough

**ATTACHMENT 1: Revised Commercial Terms Summary**

~~(As of November 11, 2015)~~

As of Request for Revised Proposal (Addendum No. 2 – 6/9/16)

Article/ Section No.	Subject	Description
<b>1</b>	<b>Definitions and Interpretation; Contract Documents; Standards</b>	
1.1	Abbreviations and Definitions	Abbreviations used in the Contract Documents are set forth in Appendix 1, Section 1. Definitions used in the Contract Documents are set forth in Appendix 1, Section 2. Abbreviations and definitions used in the Technical <del>Volumes</del> <u>Requirements</u> and not defined in Appendix 1 are set forth in Section 2.1 of the Technical Requirements.
1.2, 1.3	Construction and Interpretation of Contract Documents;	Sets forth typical construction and interpretation provisions.
1.4	Order of Precedence	Sets forth order of precedence among the Contract Documents. Notwithstanding the order in the list, in the event of conflict, the higher standard/quality/requirement applies. <u>The conceptual building design for each Indicative Building included in the Proposal and attached to the Agreement represents a design concept and minimum standards applicable to any other Building of the same Use Type. The Utilities Survey governs as to as-built locations of Utilities.</u>
1.5	Principal Developer Document	Limits ability of Developer to terminate or amend a Principal Developer document.
1.6	Reference Documents	Describes non-binding nature of Reference Documents and inability of Developer to rely on them.
1.7	Design and Construction Standards	Sets forth Developer obligations to notify the Owner of provisions inconsistent with Best Management Practice or applicable Law, sets the effective date for Manuals and Guidelines at 30 days prior to Proposal Due Date for D&C Work, and the current edition in effect for O&M Services, except as otherwise provided in the contract. Owner has right to change Manuals and Guidelines during the Term as an Owner Change.



Article/ Section No.	Subject	Description
<b>2</b>	<b>Concession Term</b>	
2.1.1	Grant of Concession	Developer to develop, design, construct, finance, operate and maintain the Project subject to terms and conditions of Contract Documents and applicable Laws.
2.1.2, 2.1.3	Project Right of Entry	<p>Developer and its Contractors are granted a Project Right of Entry onto <del>Project Site, Ancillary Site and Facilities</del>: <u>(a) the Project Site and the Facilities on and after the Effective Date until the Termination Date (provided that the right of entry with respect to the Central Plant Expansion ends on the earlier of the applicable Occupancy Readiness Date and the Termination Date); (b) the Central Plant Expansion Site on and after the Effective Date until the earlier of (i) the applicable Occupancy Readiness Date and (ii) the Termination Date (subject to requirements set forth in the Technical Requirements); (c) the Bellevue Intersection Improvements Site on and after the Effective Date until the earlier of (i) the Substantial Completion Date and (ii) the Termination Date; (d) the Borrow Site on and after the Effective Date until the earlier of (i) the Substantial Completion Date and (ii) the Termination Date; and (e) the Ancillary Site on and after the Effective Date until the earlier of (i) 30 days following the Project Final Acceptance Date and (ii) the Termination Date, in each case</u> for purposes of carrying out Developer's obligations under the <del>Agreement</del><u>Contract Documents</u>. No real property interest is granted to Developer and Parties acknowledge and agree that the requisite elements of possessory interest for State tax purposes do not exist.</p> <p><b><i>Note: Developer and its Lenders do not have an ownership, leasehold or secured interest in the University's real property or facilities at any point during the term of the Agreement.</i></b></p>
2.1.4	Possessory Interest Tax	<p>Notwithstanding Section 2.1.3, if property taxes are levied on any possessory interest of Developer created by the Agreement, the Owner will pay any final unappealable amount of such taxes assessed <del>and</del><u>directly to the County of Merced upon 60 days' written notice. The Owner will also</u> reimburse reasonable costs and expenses incurred by Developer in opposing <del>same</del><u>the imposition of any such possessory interest tax</u>, provided Developer must <del>provide the requisite notice to the Owner and contest such imposition as directed by the Owner</del><u>submit an invoice on a monthly basis in arrears with detailed supporting information and the Owner will pay within 30 days of receipt of such invoice.</u></p> <p><b><i>Note: The University retains this potential tax risk in order to avoid risk contingency associated with an unknown, future liability.</i></b></p>

Article/ Section No.	Subject	Description
2.2	Term	From Effective Date until expiry of Term (39 years from Effective Date) or any earlier termination of Agreement.
<b>3</b>	<b>Developer Responsibility for Work; Owner Review and Oversight</b>	
3.1.1 – 3.1.3	General	Developer is responsible for the Work, complying with applicable Laws, cooperating with the Owner and Governmental Entities with jurisdiction over the Work, mitigating interference with Campus Activities and coordination with any other ongoing adjacent projects.
3.1.4	Project Commitments	Except as otherwise specified, Developer is responsible for complying with, and assuming and performing on behalf of the Owner, the Owner's obligations and liabilities under the Project Commitments ( <del>except</del> <u>excluding</u> any liabilities accruing prior to the Effective Date pursuant to any indemnities to third parties, <u>except to the extent arising in connection with the Early Works</u> ).
3.2	Preliminary Planning and Engineering Activities	Developer is responsible for all preliminary planning and engineering activities appropriate for the D&C Work, unless expressly provided otherwise in the Project Agreement. Developer bears the risk of any incorrect or incomplete review, examination and investigation by it of the Work, <del>Project Site, Ancillary</del> <u>Work</u> Site and surrounding locations and of information resulting from preliminary planning and engineering activities conducted by Developer, the Owner or any other Person.
3.3	Governmental Approvals	<p>Developer is responsible for securing all Governmental Approvals other than the Owner-Provided Approvals, and any amendments required for the Project and Work. If the subject Governmental Approval is an Owner-Provided Approval or is a Governmental Approval obtained or to be obtained in the Owner's name, Developer must obtain the Owner's prior written approval of the terms and conditions of same, and Owner may <u>not unreasonably</u> withhold <u>or delay</u> such approval <del>if it determines, in its good faith discretion, that they may adversely affect the Owner or its other future projects.</del></p> <p>Developer is entitled to <u>seek</u> an extension of the applicable Completion Deadline <del>if the Building Official fails to issue a Certificate of Occupancy or the Designated Campus Fire Marshal fails to issue a Fire Clearance Notice, as applicable, within a specified number of days after Developer has fulfilled all requirements necessary for same, including submission of all required applications and documentation, and such delay is otherwise beyond the reasonable control of the Developer-Related Entities.</del> <u>(s) for any Governmental Approval Delay, but</u> Developer is not entitled to <del>any:</del> <u>(a) additional monetary compensation for such delay, including any Direct Costs and compensation for delayed Payments; (b) any relief for delays that could have been mitigated by</u></p>

Article/ Section No.	Subject	Description
		<a href="#"><u>Developer through reasonable efforts; and (c) any relief for Governmental Approvals required in connection with Alternative Technical Concepts.</u></a>
3.4	Submittals	These provisions set forth rules that apply to Owner approvals, review, comment, rejection or disapproval of Submittals generally, and hold Developer responsible for compliance with the Contract Documents notwithstanding any such Owner action or inaction.
3.5	Damage and Disruption	Developer is responsible for (a) loss or damage caused to property or assets of the Owner, its contractors or other Indemnified Parties, and (b) disruption to the Campus Activities on, or operation of, the Existing Campus arising from any act or omission of <a href="#"><u>Developer or</u></a> any Developer-Related Entity to the extent not planned for in accordance with the terms and conditions of the Contract Documents, <a href="#"><u>except to the extent caused by the active negligence or breach of the Agreement by the Owner.</u></a> Developer must repair, rebuild, or otherwise restore any such lost or damaged property or remedy any such disruption within a reasonable period of time, and if Developer fails to do so, the Owner may take such remedial steps as it deems necessary in its good faith discretion. <a href="#"><u>Subject to limitations on consequential losses,</u></a> Developer must indemnify the Owner for any such loss or damage (including costs of any step-in) on written notice.
3.6, 3.7	Policing, Security and Incident Response, Police Services	Developer acknowledges, and Owner has no liability for, Governmental Entities carrying out law enforcement duties. Developer is responsible for the safety and security of the Project, workers and public during performance of the D&C Work. The Owner is responsible for providing security services for the Facilities upon completion.
3.8	Financial Reporting	Developer must deliver on an annual basis Developer's most recent annual audited financial statements and any other reporting and notifications provided to Lenders regarding material events (including draws on Developer's debt service reserve account) under the Finance Documents.  <a href="#"><u>Developer must deliver on a monthly basis, from the Effective Date until the Project Final Acceptance Date, certified copies of Developer's draw requests to Lenders and the Lenders' technical advisor's (LTA) reports and design-build contractor invoices approved by the LTA in connection with the same.</u></a>
<b>4</b>	<b>Design and Construction</b>	
4.1.1	General Duties	Developer is responsible for the D&C Work and must achieve Occupancy Readiness of all First Delivery Facilities no later than the First Delivery Facilities Long Stop Date and achieve Substantial Completion no later than the Substantial Completion Long Stop Date. <a href="#"><u>Among other things,</u></a>

Article/ Section No.	Subject	Description
		Developer must <del>comply with Contract Documents</del> , use commercially reasonable efforts to mitigate delay and delay damages, and bear the risk of unforeseen work and conditions in connection with the D&C Work, except to the extent expressly assumed by the Owner under the Contract Documents.
4.1.2	Performance, Project Schedule	Developer must perform the D&C Work in accordance with Best Management Practice, the Contract Documents, applicable Laws, <del>and</del> terms and conditions of Governmental Approvals, <u>and approved Project Management Plan and plans thereunder</u> , and schedule the D&C Work so as to minimize inconvenience to adjacent businesses or residences.
4.2.1, 4.2.2	Design Implementation and Submittals	Developer is responsible for preparing designs, plans and specifications in accordance with Contract Documents using appropriately qualified and licensed design professionals, and is responsible for errors and omissions discovered in the Plans or Final Design Documents.
4.3	FF&E	<p>Developer is responsible for procuring, <del>delivering and</del> installing <u>and commissioning</u> the FF&amp;E, including <del>a subset of</del> <u>certain</u> FF&amp;E (Deferred FF&amp;E <u>and Facility IT Equipment</u>), which will be identified by the Owner once Developer provides one year's notice to the Owner of the anticipated Occupancy Readiness/<del>Substantial Completion</del> date <u>with respect to each Facility</u>.</p> <p>Developer will be compensated for the Deferred FF&amp;E as an Owner Change.</p> <p><u>The cost of the Facility IT Equipment will be invoiced upon delivery on site and paid within 30 days of the invoice. The cost of labor for procuring, installing and commissioning the Facility IT Equipment is included in the contract price, provided that if the quantity and/or type of Facility IT Equipment differs from the applicable Indicative IT Equipment Packages and would result in Developer incurring additional labor costs, the difference will be treated as an Owner Change.</u></p> <p><b>Note: The Deferred FF&amp;E <u>and Facility IT Equipment</u> provisions allow the University to select <del>a subset</del> <u>subsets</u> of FF&amp;E at a point in time when the program needs / users have been identified. The cost of the Deferred FF&amp;E will be determined under the Owner Change Procedure once the University identifies the Deferred FF&amp;E, and compensation for the Deferred FF&amp;E will be limited to the costs and mark-ups expressly permitted under the Agreement and paid by way of lump sum payment or progress payments. <u>The cost of the Facility IT Equipment, which is subject to the Owner's approval (which approval will be given if consistent with the Owner's IT Equipment Supplier Information), will be invoiced as it is delivered on site, but the cost of associated labor is included in the contract price unless additional labor costs are incurred due to differences between the actual Facility IT</u></b></p>

Article/ Section No.	Subject	Description
		<u><a href="#">Equipment and the applicable indicative IT Equipment Packages.</a></u>
4.4	<del>Project</del> <u>Work</u> Site, <del>Ancillary Site and Bellevue Intersection</del>	<p>The Project must be situated entirely within the Project Site, with the exception of: <u><a href="#">(a) the Bellevue Intersection Improvements, which must be situated entirely within the Bellevue Intersection ROW Site; and (b) the Central Plant Expansion, which must be situated entirely within the Central Plant Expansion Site.</a></u></p> <p>The Ancillary Site is provided solely for use by Developer and its Contractors for construction staging and parking between the Effective Date and the Project Final Acceptance Date, <u><a href="#">and must be handed over within 30 days following the Project Final Acceptance Date in the required condition.</a></u></p> <p><u><a href="#">The Borrow Site is provided solely for purposes of excavation and use of borrow material during the Construction Work. The Owner makes no representation or warranty regarding quantity or fitness for purposes of the borrow material or the Borrow Site. Developer must hand back the Borrow Site on the Substantial Completion Date in the required condition.</a></u></p> <p>Developer is responsible for obtaining (a) from the County of Merced all <u><a href="#">access</a></u> rights <del>in ROW and</del> <u><a href="#">Governmental Approvals</a></u> necessary to perform the D&amp;C Work with respect to the <u><a href="#">applicable portion of the Bellevue Intersection Improvements within the Bellevue Intersection Site (Western Portion), and (b) any other real property which Developer deems desirable for the Project, including for additional construction staging and parking</a></u> <u><a href="#">Developer-Acquired Real Property</a></u>. Developer must comply with all Site Commitments.</p>
4.5	Utility Adjustments	<p>Developer is responsible for coordinating and causing all Utility Adjustments necessary for timely Work, including negotiating and executing necessary Utility Agreements that are reasonably acceptable to the Owner and consistent with applicable Contract Document requirements. Developer is responsible for all Utility Adjustment costs except Betterment costs, which are the responsibility of the Utility Owner. <del>Developer is entitled to compensation/relief for</del> <u><a href="#">Except for any applicable Relief Event (including Utility Owner Delays and Unknown Utilities, which are Relief Events), Developer is not entitled to any additional monetary compensation, time extension or other relief in connection with the Utility Adjustment Work or Utilities impacting or impacted by the Project or the Work.</a></u> Developer must respond to requests by Utility Owners for Utility Enhancements, but is not required to agree to them. If agreed, such work must be performed by separate contract outside of the Work, is subject to Owner's prior written approval, in its sole discretion, and is subject to the same standards and requirements as if it were a Utility Adjustment. Developer may not commence construction of a Utility Adjustment until NTP 2 is issued except to the extent authorized by the Owner in its sole discretion as Advance Construction Activities under Section 4.8.2. <u><a href="#">Developer</a></u></p>

Article/ Section No.	Subject	Description
		<u>must submit to PG&amp;E, on or prior to [September 1], 2016, a complete application and all supporting documents required by PG&amp;E to request an increase in service capacity of electricity and gas Utilities sufficient to meet the increased demand for such Utilities for each Facility.</u>
4.6	Conditions to Commencement of Design Work	<p><u>The parties acknowledge the Early Design Work performed under the Early Works Agreement.</u></p> <p>Various conditions precedent must be satisfied prior to issuance by the Owner of NTP 1 and commencement of <u>any further</u> Design Work by Developer, including having in place the Performance Bond and Payment Bond and insurance policies required for Design Work, Developer has submitted and Owner has approved the Preliminary Project Schedule, Project Master Plan and specified components of the Project Management Plan, representations and warranties remain true and correct, Developer is not in <u>receipt of any notice of</u> default <u>delivered</u> under financing documents <u>(unless such default has been cured)</u>, and Developer has delivered the Financial Model into escrow and the D&amp;C Pricing Documents to the Owner as required.</p>
4.7	Conditions to Commencement of Construction Work	<p><del>Except to the extent authorized by the Owner in its sole discretion as</del> <u>The parties acknowledge the Early Construction Work performed under the Early Works Agreement. Except for any</u> Advance Construction Activities <u>authorized</u> under Section 4.8.2, various conditions precedent must be satisfied prior to issuance by the Owner of NTP 2 and commencement of <u>any further</u> Construction Work by Developer, including having in place insurance policies required for Construction Work, Governmental Approvals necessary to begin the applicable portions of the Construction Work have been obtained, Developer has submitted and Owner has approved the Baseline Project Schedule and specified components of the Project Management Plan, Developer has delivered an initial Skilled Workforce Plan and initial SBE Plan, representations and warranties remain true and correct, there exists no uncured Developer Default, Developer is not in <u>receipt of any notice of</u> default <u>delivered</u> under financing documents <u>(unless such default has been cured) and no Lender has indicated it is unwilling or unable to fund Developer's D&amp;C and O&amp;M costs</u>, and Developer has provided a functional Project Office.</p>
4.8	Construction Commencement Deadline; Advance Construction Activities	<p>Developer must commence Construction Work no later than the date which is 150 days after the Effective Date (adjusted for any Relief Events). Failure to do so is a Developer Default.</p> <p>The Owner may, in its sole discretion, authorize Developer to perform Advance Construction Activities prior to NTP 2, and Developer must satisfy and comply with any conditions and requirements imposed by the Owner prior to commencing such activities.</p>
4.9.1	Substantial Completion	Developer must exercise its best efforts to achieve Substantial Completion on or before the Scheduled Substantial Completion Date (which is the Baseline Substantial Completion Date



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		<p>adjusted for any Relief Event Delays).</p> <p>Failure to achieve Substantial Completion by the Substantial Completion Long Stop Date (12 months after the Scheduled Substantial Completion Date) is a Developer Default.</p>
4.9.2	Conditions to Substantial Completion	<p>Various conditions precedent must be satisfied for Substantial Completion, including <del>completion of the D&amp;C Work except Punch List items, Designated Campus Fire Marshal and Building Official approval, Facilities and FF&amp;E are ready for use for performing Facilities Activities</del><u>Certificates of Occupancy Readiness have been issued for all Facilities, Facility Systems are operational and functional and have passed all required inspections and tests, Developer has completed all other D&amp;C Work except for Punch List items, Developer has completed all work related to the D&amp;C Work that it is obligated to perform for or on behalf of third parties except for Punch List items,</u> all Governmental Approvals and third party approvals required for use and operation of the Project have been obtained, <del>the Operations and Maintenance Plan and other required O&amp;M submittals have been approved or accepted and necessary training completed,</del> all IP Materials and any other specified materials have been delivered to the Owner or deposited to escrow, there exists no uncured Developer Default (except any Developer Default (a) that will be cured by achieving Substantial Completion, (b) arising from a breach regarding the O&amp;M Services or (c) for which the applicable cure period has not expired), all Developer-provided O&amp;M insurance policies are in place, Developer has submitted the D&amp;C Punch List and all other Submittals required to be submitted prior to Substantial Completion and Owner has approved such Submittals to extent required, and Developer has delivered originally signed waivers and releases from all Contractors <u>(unconditional for payments received or conditioned upon receipt of specified payment for work completed up to Substantial Completion).</u></p> <p>Developer must give 60 days' prior written notice of anticipated Substantial Completion Date, and Owner will review and inspect within the next 14 days and thereafter issue a Certificate of Substantial Completion (effective as of the actual date achieved) or notify Developer why it has not been achieved.</p>
4.9.3	D&C and Facility Punch Lists	<p>Developer must prepare, maintain and complete the Work identified on the D&amp;C Punch List and each Facility Punch List in accordance with contract and Project Management Plan requirements. Developer is not entitled to any relief from Availability and Performance Deductions arising from uncompleted Punch List items.</p>
4.9.4	Project Final Acceptance	<p>Following Substantial Completion, Developer must complete all remaining Construction Work, including Punch List items, and exercise its best efforts to achieve Project Final Acceptance by the</p>

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		<p>Project Final Acceptance Deadline.</p> <p>Various conditions precedent must be satisfied for Project Final Acceptance, including completion of all Punch List items, submittal of all Submittals required to be submitted for D&amp;C Work after Substantial Completion and approval by the Owner of same, receipt by the Owner of the As-Built Plans, delivery of all required manufacturer warranties, all IP Materials and any other specified materials have been delivered to the Owner or deposited to escrow, delivery of any certifications from the AOR or EOR required by any Governmental Entity with jurisdiction, there exists no uncured Developer Default (except any Developer Default (a) that will be cured by achieving Project Final Acceptance, (b) arising from a breach regarding the O&amp;M Services or (c) for which the applicable cure period has not expired), <u>Developer has delivered originally signed unconditional waivers and releases from all Contractors or has provided a bond around any stop notices from any such Contractor, Developer has submitted final documentation demonstrating full compliance with the skilled workforce requirements under Section 8.10.1,</u> and Developer certifies and has paid for all work by third parties that Developer is obligated to pay for other than disputed amounts.</p> <p>Developer must give the Owner written notice when it determines it has achieved Project Final Acceptance. The Owner will review and inspect within the next 20 days and thereafter issue a Certificate of Project Final Acceptance (effective as of the actual date achieved) or notify Developer why it has not been achieved. Within 10 days of issuance of a Certificate of Project Final Acceptance, the Owner will file a Project Notice of Completion.</p>
4.10	Contaminated Materials <u>and Undesirable Materials Management</u>	<p>Developer is responsible for Contaminated Materials and Undesirable Materials management.</p> <p>As between the parties: (a) Developer is considered the sole generator and arranger for Releases of Contaminated Materials by <u>Developer or</u> any Developer-Related Entity and Contaminated Materials that migrate onto the Work Site where the source is <del>a</del><u>Developer or any</u> Developer-Related Entity; and (b) the Owner is considered the sole generator and arranger of Known Contaminated Materials and Unknown Contaminated Materials existing prior to the Effective Date (provided Developer manages in accordance with all applicable requirements) and for Releases of Contaminated Materials by the Owner or a third party that is not a Developer-Related Entity, <u>Contaminated Materials that migrate onto the Work Site where the source is the Owner,</u> and Contaminated Materials that migrate onto the Work Site <u>(excluding any Developer-Acquired Real Property)</u> where the source is <del>any of them</del><u>a third party that is not a Developer-Related Entity.</u></p> <p>Discovery of Unknown Contaminated Materials and Releases of Contaminated Materials by the Owner at any time during the term <u>of the Agreement (or the Early Works Agreement)</u> are Relief Events for which Developer is entitled to additional compensation, time extension and other relief</p>



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		<p>under Article 10. Releases of Contaminated Materials by third parties is a Relief Event; Developer must assign and subrogate to the Owner all rights of recovery of <a href="#">Developer and</a> any Developer-Related Entity against third parties upon written request from the Owner.</p> <p>To the extent the Owner is considered the generator and arranger for (a) Known Contaminated Materials or Unknown Contaminated Materials existing prior to the Effective Date under Section 4.10.2 or (b) Releases of Contaminated Materials by the Owner or a third party that is not a Developer-Related Entity or Contaminated Materials that migrate to the Project Site if the source is the Owner of a third party that is not a Developer-Related Entity<sup>17</sup>. Developer may seek contribution from the Owner for Developer's Losses arising out of third party claims for same, subject to certain procedural requirements.</p>
4.11	Environmental Compliance	Developer must comply with all applicable Environmental Laws and perform all environmental mitigation measures and permit conditions, monitoring and reporting required under the Contract Documents, Environmental Approvals and CEQA Documentation that are applicable to the D&C Work and with any additional commitments in any subsequent environmental re-evaluations submitted up to 30 days prior to the Proposal Due Date.
4.12.1	Oversight	<p>The Owner has robust Oversight rights over the D&amp;C Work. Developer must uncover finished work at the request of the Owner prior to Final Acceptance and fix any deficiency found at its cost; if the work was compliant, such uncovering will be an Owner-Caused Delay/Relief Event. Owner may step in to correct if Developer fails to do so. Nothing in the Contract Documents, except the limitation on remedies in Section 19.2.10, limits the Owner's right to assert claims for patent and latent defects <a href="#">in the Non-O&amp;M Segment Work</a>.</p> <p><b>Note: The Owner may conduct Oversight of the D&amp;C Work at any time, so long as it does not unreasonably interfere with the Work. Examples of Oversight rights include monitoring, inspecting, sampling, measuring, auditing, attending, observing, testing, investigating and conducting any other oversight of the Project or the Work.</b></p>
4.12.2	Meetings	Developer must conduct weekly progress meetings and provide progress reports throughout the Term in accordance with requirements set forth in the Technical Requirements. The Owner will call a preconstruction conference in Merced prior to commencement of construction. Either party can request additional meetings with the other party.
4.13	Design and Construction	Developer must correct any Defect in the Non-O&M Segment Work related to: (a) the Central Plant Improvements, if notified of same within the first three years following Substantial Completion; <b>and</b>

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	Warranties	<p>(b) the Bellevue Intersection Improvements, <u>if notified of same within the first year following Substantial Completion; and (c) a 3060 ASF addition to the existing Early Childhood Education Center (ECEC) building</u>, if notified of same within the first year following Substantial Completion (each, a “Non-O&amp;M Segment Warranty Period”).</p> <p>Upon expiry of the applicable Non-O&amp;M Segment Warranty Period, Developer must assign to the Owner, to the extent assignable, all of Developer’s and Contractors’ rights under warranties in connection with the Non-O&amp;M Segment and the Non-O&amp;M Segment Work.</p> <p><b><i>Note: The non-O&amp;M segments are the Bellevue Intersection <del>and</del>, the Central Plant, <u>and a 3060 ASF addition to the existing ECEC building</u>. The intersection improvements will be deeded to and maintained by the County <del>and the</del>. <u>The Central Plant and the addition to the existing ECEC building</u> will be operated and maintained by the University. The Agreement includes enhanced warranty protections for these improvements as Developer has no O&amp;M obligations for these improvements following completion of design and construction. For the rest of the Project, Developer is responsible for performing O&amp;M Services and the full performance regime of the Agreement (including payment deductions and assessment of Noncompliance Points) applies to sub-par performance throughout the term of the Agreement.</i></b></p> <p>Developer must obtain from all Contractors warranties appropriate for work of similar scope and scale, and extend to any third parties for whom Work is being performed. Warranties of Key Contractors must be for such periods specified in the Technical Requirements or, if not specified, for not less than one year from date of <u>the applicable</u> Certificate of Occupancy Readiness <del>or the Substantial Completion Date, as applicable</del>. Developer must obtain all customary manufacturer and supplier warranties with respect to the FF&amp;E in the name of and for the benefit of the Owner.</p>
<b>5</b>	<b>First <u>and Second</u> Delivery Facilities and Occupancy Readiness</b>	
5.1	First <u>and Second</u> Delivery Facilities	<p>Developer must exercise its best efforts to achieve Occupancy Readiness for each First Delivery Facility by <del>June</del><u>July</u> 1, 2018 (subject to adjustment for Relief Events) and for each Second Delivery Facility by June 1, 2019 (subject to adjustment for Relief Events).</p> <p>If Occupancy Readiness is not achieved for the First Delivery Facilities by <del>August</del><u>September</u> 1, 2018 (subject to adjustment for Relief Events), liquidated damages will be assessed and deducted from the <del>Second Milestone Payment, and any excess amounts will be deducted from the Third Milestone Payment, Monthly Disbursements, and Quarterly Settlement Amounts, as necessary</del><u>Monthly Progress Payments</u>.</p>

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		<p>If Occupancy Readiness is not achieved for the Second Delivery Facilities by August 1, 2019 (subject to adjustment for Relief Events), liquidated damages will be assessed and deducted from the <del>Third Milestone Payment, and any excess amounts will be deducted from the Monthly Disbursements and Quarterly Settlement Amounts, as necessary.</del></p> <p><del>If Developer commits to delivering a portion of the Second Delivery Facilities by an earlier date and Occupancy Readiness is not achieved by that date (subject to adjustment for Relief Events), liquidated damages will be assessed and deducted from the Third Milestone Payment, and any excess amounts will be deducted from the Monthly Disbursements and Quarterly Settlement Amounts, as necessary.</del> <u>Monthly Progress Payments.</u></p> <p>Subject to the Owner's rights and remedies under Articles 19 and 20, liquidated damages assessed under Section 5.1 are the sole and exclusive remedy of the Owner for any failure by Developer to achieve Occupancy Readiness of the First Delivery Facilities or the Second Delivery Facilities by the applicable deadlines.</p> <p>Failure by Developer to achieve Occupancy Readiness for all First Delivery Facilities by the First Delivery Facilities Long Stop Date is a Developer Default.</p>
5.2	Occupancy Readiness	<p>The Owner will issue a Certificate of Occupancy Readiness for any Facility prior to Substantial Completion for which specified conditions precedent are satisfied, including completion of applicable D&amp;C Work except Facility Punch List items, and other requirements that mirror the conditions precedent to overall Substantial Completion, but with respect to the particular Facility. However, the Owner is not obligated to issue a Certificate of Occupancy Readiness for a Facility any earlier than the date specified in Developer's Sequencing Plan for delivery of such Facility.</p>
5.3	Facility Final Acceptance	<p>Following achievement of Occupancy Readiness of a Facility, Developer must complete all remaining Construction Work for the Facility, including all Facility Punch List items, and exercise its best efforts to achieve Facility Final Acceptance by the applicable Facility Final Acceptance Deadline.</p> <p>Various conditions precedent must be satisfied for each Facility Final Acceptance, including completion of all Facility Punch List items, submittal of all Submittals required to be submitted for D&amp;C Work for the Facility after Occupancy Readiness and approval by the Owner of same, receipt by the Owner of the As-Built Plans for the Facility, delivery of all required manufacturer warranties, all IP Materials have been delivered to the Owner or deposited to escrow, and delivery of any certifications from the AOR or EOR required by any Governmental Entity with jurisdiction.</p> <p>Developer must give the Owner written notice when it determines it has achieved Facility Final</p>

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		Acceptance. The Owner will review and inspect within the next 20 days and thereafter issue a Certificate of Facility Final Acceptance (effective as of the actual date achieved) or notify Developer why it has not been achieved. Within 10 days of issuance of a Certificate of Facility Final Acceptance, the Owner will file a Facility Notice of Completion.
5.4	LEED Certification	<p>Developer is responsible for achieving Gold level LEED certification for each Building by the first anniversary of the effective date on which Occupancy Readiness or Substantial Completion is achieved, whichever is earlier (LEED Certification Deadline). Failure to do so <del>will result in the assessment of liquidated damages in an amount equal to \$5.50 per ASF of the Building, which amount will be deducted from the first and any subsequent Monthly Disbursements following the later of the LEED Certification Deadline and the Substantial Completion Date and from the first and any subsequent Quarterly Settlement Amounts until the assessed liquidated damages are deducted in full</del> <u>is a Developer Default.</u></p> <p><b>Note: The Contract Documents include technical requirements and other contractual obligations, including the “painshare/gainshare” provisions discussed below, to ensure that the Project supports the campus’ overall compliance with the UC Sustainability Policy.</b></p>
<u>5.5</u>	<u>Central Plant Work</u>	<u>Base Direct Costs incurred by Developer or its Contractors to perform certain Central Plant Work, and reasonably approved by the Owner, will be paid by the Owner to Developer within 30 days of receipt of an invoice from Developer for same. Mark-ups for \$5 million of such Base Direct Costs are included in the contract price. If such Base Direct Costs exceed \$5 million, the mark-ups (as permitted in Appendix 18) will be paid by the Owner pursuant to a Change Order.</u>
<b>6</b>	<b>Operations and Maintenance</b>	
6.1	Commencement of O&M Services	Developer will commence the O&M Services upon the effective date of: (a) the applicable Certificate of Occupancy Readiness, if any; or (b) the Certificate of Substantial Completion.
6.2	O&M Standards and Requirements	<p>Developer must perform the O&amp;M Services in accordance with Best Management Practices as it evolves from time to time, the Contract Documents, all applicable Laws and Governmental Approvals, specified plans and any Safety Compliance Order.</p> <p>Failure to meet the performance standards specified in Section 4 of the Technical Requirements entitles the owner to various rights and remedies, including assessment of Noncompliance Points, payment deductions and termination for Developer Default.</p> <p>Developer’s obligations with respect to Contaminated Materials and environmental compliance also</p>

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		<p>apply during performance of the O&amp;M Services.</p> <p>The Owner is responsible for the cost of Utility services required for the O&amp;M Services, subject to the painshare/gainshare provisions of Appendix 17.</p> <p><b>Note: The “painshare/gainshare” provisions in Appendix 17 create an incentive structure for Developer to design and operate the Facilities in an energy efficient manner. This is important because the University pays for the cost of utility services during the operations phase. <u>Appendix 17 requires Developer to design each Building and specified exterior Areas to achieve a minimum performance level that is a 20% energy reduction below the Title 24 Energy Efficiency Standard.</u> Energy consumption targets are developed for three types of energy utilities during the design and construction phase of the Project. If actual energy consumption during operations is lower than the targets by more than <del>5</del>15%, Developer receives 50% of the energy cost savings <u>in excess of the 15%</u> so long as all Facilities/<u>specified exterior Areas</u> are performing within acceptable bounds. If actual energy consumption during operations exceeds the targets during operations <u>by more than 15%</u>, Developer pays 100% of the extra energy costs <u>in excess of the 15%</u>. The <u>painshare/gainshare provisions do not apply to (a) any Facility for a period of two years after the applicable Occupancy Readiness Date or (b) the Competition Field and the Competition Pool.</u></b></p> <p>Developer is responsible for emergency repair work, as demonstrated by issuance of a corresponding Change Order or Unilateral Change Order, from and after the Effective Date and must solicit competitive bids for such work if specified by the Owner.</p>
6.3	Vandalism	<p>Developer is responsible for any maintenance, repair or replacement of a Facility required due to Vandalism. During the Operating Period, subject to an Annual Vandalism Deductible (\$10,000 of Direct Costs per Calendar Year), Vandalism is a Relief Event for which Developer is entitled to additional compensation and relief.</p>
6.4	Oversight, Meetings and Reporting	<p>The Owner has robust Oversight rights over the O&amp;M Services. Developer must conduct monthly meetings and provide regular reporting relating to the O&amp;M Services. The Owner may attend <del>all</del> <u>of any such meeting between</u> <del>Developer’s progress meetings with and</del> its Lead O&amp;M Firm and may raise any questions, concerns or opinions without restriction.</p> <p><b>Note: The Owner may conduct Oversight of the O&amp;M Services at any time, so long as it does not unreasonably interfere with the Work. Examples of Oversight rights include monitoring, inspecting, sampling, measuring, auditing, attending, observing, testing, investigating and</b></p>

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		<b><i>conducting any other oversight of the Project or the Work.</i></b>
6.5 – 6.7	Renewal Work and Renewal Work Reserve	<p>Developer is responsible for performing Renewal Work in accordance with a Renewal Work Schedule, which will be submitted/updated by Developer and agreed to by the Owner on an annual basis. <a href="#"><u>Developer may perform Renewal Work not identified in the Renewal Work Schedule at any time as necessary to maintain compliance with the Availability Standards and Performance Standards, subject to scheduling the performance of such Renewal Work at times reasonably agreed to by the Owner.</u></a></p> <p>Developer must fund and maintain a Renewal Work Reserve in the amounts required by the Lenders. The initial estimated amounts will be attached as a sub-appendix to Appendix 2, then updated throughout the Operating Period, and amounts cannot be reduced from such specified amounts without the prior approval of the Owner. The Lenders will have a first priority security interest in the reserve, and the Owner will have a second priority security interest. Amounts in the reserve may only be used for Renewal Work, Compliance Work, and work to meet Handback Requirements. Any balance in the Renewal Work Reserve as of four years prior to the expiry date of the Term will roll over into the Handback Requirements Reserve. Developer may deliver one or more letters of credit in lieu of maintaining a cash account for the reserve.</p>
6.8, 6.9	Handback Requirements and Handback Requirements Reserve	<p>On the Termination Date, Developer must transfer the Project to the Owner in the condition meeting the Handback Requirements, as specified in the Technical Requirements (but if early termination, only to the extent Renewal Work was required to be performed prior to such early termination).</p> <p>Beginning four years prior to the end of the Term, Developer must establish and fund a Handback Requirements Reserve Account (and any remaining balance in the Renewal Work Reserve will be transferred to the Handback Requirements Reserve at such time). Funds in the reserve must be used exclusively for work required to meet Handback Requirements, and required amount adjusted annually and Developer must fund any shortfall. The Owner will have a first priority security interest in this account. Any amount remaining in the reserve on the Termination Date will go to the Owner. Developer may deliver one or more letters of credit in lieu of maintaining a cash account for the reserve (in which case any amount remaining on the Termination Date may be drawn by the Owner or deducted from the last Monthly Disbursement or Termination Compensation (if terminated earlier), at Owner's election).</p> <p>If Developer disputes, in good faith, any Renewal Amount required for the Handback Requirements Reserve as determined by the Owner, Developer must fund the undisputed portion and the accelerated Dispute Resolution Procedure will apply to the disputed portion.</p>



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<b>7</b>	<b>Noncompliance Points</b>	
7.1 – 7.3	Noncompliance Points System, Assessment, Notification, Cure,	Appendix 5 sets forth a Noncompliance Points table, identifying specific breaches or failures in performance that will result in the assessment of Noncompliance Points and accrual of Noncompliance Instances. Developer is responsible for self-reporting, and Owner may notify as well. Applicable cure periods are specified in Appendix 5, and if the Owner notified rather than Developer, 100% of the specified Noncompliance Points may be assessed prior to the expiration of the applicable cure period (if any), whereas if Developer notifies, no points are assessed unless the Noncompliance is not fully cured within the specified cure period. Noncompliance that is not fully cured within the applicable cure period or Recurrence Period will be treated as a new instance of Noncompliance for each new cure period/Recurrence Period until it is fully cured, unless the Owner chooses to exercise its step-in rights (which it may after expiration of the initial cure period/Recurrence Period). Developer is responsible for keeping and providing the Owner with current records of the number of assessed Noncompliance Points and accrual of Noncompliance Instances and related information.
7.4	Monetary Deductions	<p>In addition to Noncompliance Points, certain instances of Noncompliance will result in monetary deductions from Availability Payments and Partial Availability Payments in accordance with Appendix 6.</p> <p>Developer acknowledges that any monetary deductions assessed under the Agreement are reasonable liquidated damages to compensate the Owner for increased costs of administration, loss of tuition and auxiliary revenues, loss of reputation, etc., and are the Owner's sole remedy unless otherwise expressly provided in the agreement.</p>
7.5	Increased Oversight	<p>If Developer is assessed more than a specified number of Noncompliance Points or accrues more than a specified number of Noncompliance Instances within specified time frames on a rolling basis, the Owner has increased Oversight rights at Developer's expense.</p> <p><b><i>Note: The increased Oversight thresholds provide an early warning to the University and Developer for continuing minor defaults by the Developer which may eventually lead to a Developer Default and termination. The University has the right in these circumstances to increase its Oversight of the Work at Developer's expense to help ensure that the Project gets back on track and Developer Default is avoided.</i></b></p>

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8	<b>Contracting and Labor Practices</b>	
8.1, 8.2	Contractors, Employees	<p>Developer must provide list of all Contracts and Contractors with each monthly report required under the Agreement or Technical Volumes and allow ready access to them. Developer must deliver to Owner copies of all Key Contracts, guarantees, amendments and supplements (unredacted) within 10 days after execution and any other Contract within 20 days upon request. Developer must notify Owner of name, address, phone number and authorized representative of any potential first-tier Contractor not later than 15 days prior to scheduled initiation of work by such Contractor.</p> <p>Developer must only use Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Contractors must have all necessary licenses, bonds and insurance required by Law, including registration to perform public work under Labor Code Section 1725.5. Developer must not use Contractors that are ineligible to bid on, be awarded or perform work on public works projects pursuant to Labor Code Section 1777.1.</p>
8.3	Key Contractors	<p>Developer must use the Key Contractors identified in Appendix 2 (and if identified in SOQ or SSOQ, cannot remove or replace without Owner approval in its good faith discretion). A Key Contractor may not be terminated by Developer or a Contractor except for (1) material uncured default by Key Contractor, (2) termination of the Project Agreement and Owner's election not to assume the Key Contract, (3) suspension, debarment, disqualification or removal of Contractor or agreement or voluntary exclusion of Contractor from bidding, proposing or contracting with any federal, State or local department or agency, or (34) with Owner's prior written approval in its good faith discretion.</p> <p><b><i>Note: The Agreement protects the University from unilateral changes in the Key Contractors and Key Personnel (see below) identified in the Statement of Qualifications and proposals.</i></b></p> <p>Key Contracts must contain certain mandatory provisions as set forth in Section 8.3.2, including (1) compliance with applicable provisions of Contract Documents, Governmental Approvals and applicable Laws, (2) no right to suspend or demobilize until Key Contractor delivers to the Owner written notice of Developer's breach or default, requirement to participate in meetings between Developer and Owner, (3) agreement to participate in any dispute resolution proceeding under Project Agreement if requested, (4) permit assignment of Key Contracts as contemplated in Project Agreement and Lender's Direct Agreement, (5) expressly include the Indemnified Parties as indemnities, with direct right of enforcement, in any indemnity given by Key Contractor, and (6) expressly include an acknowledgement that the Key Contractor has no right or claim to any lien or</p>



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		encumbrance on the Project, the <del>Project Site, the Ancillary</del> <u>Work</u> Site or the Facilities for failure of counterparty to pay and a waiver of any such right or claim as may exist at Law or equity.
8.4	Key Personnel	Developer must retain the Key Personnel identified in Appendix 2 and any replacement must be approved by the Owner in its good faith discretion. Developer must ensure adequate supervision of the Work, including presence of the Project Executive, Project Manager or other Owner-approved designee at the Work Site at all times while the Work is in progress.
8.6 – 8.11	Labor and Ethical Standards, Nondiscrimination, Prevailing Wages <u>and Fair Wages</u> , Skilled Workforce, Small Businesses	<p>Developer and Contractors must comply with all applicable labor laws and standards. All individuals performing the Work must have the requisite skill and experience, licenses and certifications, failing which they must be replaced or affected work may be suspended.</p> <p>Developer must adopt policies establishing ethical standards of conduct for <u>Developer and</u> all Developer-Related Entities.</p> <p>Developer and Contractors (other than Suppliers, manufacturers or distributors) must comply with Sections 12900 through 12996 of the State of California Government Code (requiring nondiscriminatory employment practices), and must permit access to records of employment, etc. to Owner or any agency of State of California designated by Owner for compliance investigation.</p> <p>Developer, the Lead Contractor and the Lead O&amp;M Firm and their respective Contractors (<del>excluding Suppliers, manufacturers or distributors</del>) must comply with Sections 1770, 1771, 1772, 1773, 1774, 1775 and 1776 of the State of California Labor Code (relating to prevailing wage rate and payroll record requirements). Developer and Contractors must pay not less than prevailing wage rates. Work will be subject to an Owner's Labor Compliance Program. <u>Developer must comply, and must cause every Contractor to comply, with the Owner's fair wage/fair work plan entitled "UC Fair Wage/Fair Work Plan."</u> For purposes of these provisions, "Contractor" excludes Suppliers, manufacturers and distributors.</p> <p>For Contracts greater than \$250,000, workers employed by Developer or any Contractor to perform manual labor in connection with the development and Construction Work must be either (a) registered in, or graduates of, an approved apprenticeship program, or (b) Skilled Journeypersons covered by a collective bargaining agreement for the applicable trade, in the graduated percentages set forth in Section 8.10.1. This requirement does not apply if the local joint labor-management program does not have the capacity, or neglects or refuses, to dispatch sufficient apprentices.. Developer must submit a Skilled Workforce Plan prior to commencement of Construction Work and submit updated plans on each anniversary of NTP 2 until completion of Construction Work. <del>If Developer fails</del> <u>Each monthly certified payroll report submitted under Section 8.9.4.2 must include</u></p>

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		<p><u>an interim report on the current state of compliance by Developer with the Skilled Workforce Plan, and Developer must submit final documentation to demonstrate full compliance with Section 8.10.1 as a condition precedent to Project Final Acceptance. Developer must contact each local joint labor-management program to arrange for these programs to dispatch apprentices to Developer and its Contractors as and when needed to perform the Construction Work. If the final documentation submitted by Developer indicates that Developer has failed to comply with these requirements, liquidated damages will be assessed for each one (1) percent that the actual percentage of workers employed directly or indirectly by Developer or a Contractor is below the applicable percentage requirement.</u></p> <p>Developer must aspire and exercise good faith efforts to achieve specified participation of local Small Business Enterprises and local Disabled Veteran Business Enterprises. Local means an enterprise headquartered in Counties comprising the San Joaquin Valley. Developer must submit an SBE Plan and update same on each anniversary of NTP 2 throughout the Term.</p> <p>A self-certification form must be submitted for each SBE and DVBE.</p> <p><b>Note: The Agreement ensures that Developer complies with University policy.</b></p>
8.12	<p><del>Certification of</del> Payment to Contractors; <del>Bond</del><u>Releases</u> and <del>Release of Contractor</del> <del>Stop Notice Claims,</del> <del>etc.</del><u>Waivers; Bonding</u></p>	<p>Developer and each Contractor must comply with applicable statutory provisions regarding prompt payment of subcontractors and waivers and releases by subcontractors. If a stop payment notice, lien or other claim is made against the Owner or Project by any Contractor in connection with the Work, Developer must bond in compliance with statutory requirements as necessary to release such claim within 10 days of filing.</p> <p><b>Note: The Agreement specifically requires Developer and subcontractors of all tiers to comply with statutory requirements for prompt payment of subcontractors and waivers and releases by subcontractors. If any lien or stop payment notice is filed by any subcontractor, the Agreement requires Developer to procure the bond(s) necessary to release it. Developer must also deliver waivers and releases from all subcontractors as a condition precedent to Substantial Completion (see Section 4.9.2 above).</b></p>
8.13	No Forced Labor	<p>Developer certifies that no foreign-made equipment, materials or supplies furnished to the Owner pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor or indentured labor under penal sanction.</p> <p>If Developer knew, or should have known, that foreign-made equipment, materials or supplies furnished were so produced, the Agreement may be terminated at the option of the Owner for</p>

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		<p>Developer Default and Developer and any applicable Contractor may be removed from consideration for Owner contracts for up to 360 days. <a href="#"><u>Developer may protest any sanctions imposed in accordance with the procedures set forth in the University's Administrative Guidelines on the Procurement of Foreign-Made Equipment, Materials, or Supplies Produced by Forced Labor, Convict, or Indentured Labor, issued on April 7, 1998.</u></a></p> <p><b>Note: The Agreement ensures compliance with University policy.</b></p>
<b>9</b>	<b>Safety Compliance</b>	
9.1, 9.2	Safety Compliance Orders; Duty to Comply	<p>The Owner may issue Safety Compliance Orders and must consult with Developer prior to doing so except in case of an Emergency. Developer must implement Safety Compliance upon issuance of such order. Relief Event is not an excuse for not implementing a Safety Compliance Order, but a Safety Compliance Order is itself a Relief Event.</p> <p><b>Note: A Safety Compliance Order is a directive from the University to Developer to make improvements, repairs or reconstructions to correct a safety condition identified by the University or a Governmental Entity. For example, if the University reasonably determines that there is inadequate lighting along a pathway that creates a safety condition (even if compliant with contract requirements), the University may issue a Safety Compliance Order requiring Developer to correct it, and Developer must do so although it may be entitled to compensation/relief under the Relief Event regime.</b></p>
<b>10</b>	<b>Relief Events</b>	
		<p>Relief Events are defined in Appendix 1. These are specified events which Owner agrees to bear the risk as between the parties should they occur, subject to certain limitations and conditions.</p> <p>Developer may make claims for additional compensation, time extension and other relief for Relief Events in accordance with Article 10. Developer must strictly follow the claims procedure and other obligations (including mitigation) set forth in the Article, and is not entitled to any other compensation or relief for a Relief Event. <a href="#"><u>Any Relief Event that occurred during performance of the Early Works under the Early Works Agreement is deemed to have occurred under the Agreement, and Developer may submit a corresponding Relief Event Claim within 30 days following the Effective Date so long as it provided the requisite Relief Event Notice and kept the requisite records.</u></a></p> <p>Deductible Relief Events are subject to a \$50,000 per claim costs deductible (indexed to CPI), and a 90-day deductible for delayed Payment relief under Section 10.4. All entitlement to compensation is net of insurance proceeds, insurance deductibles/self-insured retentions, and deemed</p>

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		<p>self-insurance.</p> <p>Monetary compensation is limited to Direct Costs (including limited delay costs), as defined in Appendix 18, and, if applicable, compensation for delayed receipt of <del>Milestone Payments</del>, <u>Partial Availability Payments</u> and/or <del>Final Acceptance Payment</del> <u>Availability Payments</u> due to a Relief Event <del>Delay that delays achievement of the corresponding Milestone</del>, <u>Delays that delay the scheduled delivery date or Scheduled Substantial Completion</u> <del>or Final Acceptance Date, as applicable, beyond the applicable baseline delivery/Substantial Completion date</del>. An equity true-up payment will be calculated by the Owner and paid to Developer following Substantial Completion or, in the event of Termination for Convenience prior to Substantial Completion, at termination.</p> <p>Time extensions are limited to extensions of Completion Deadlines for critical path delay. If the Owner elects to pay compensation to which Developer is entitled by a deferred payment method, the Owner will pay additional compensation to offset the effect of such delayed payment on Equity IRR and debt service coverage ratios.</p> <p>Developer is also entitled to relief from assessment of Noncompliance Points, accrual of Noncompliance Instances, delivery by the Owner of an Initial Breach Notice or Final Breach Notice, assessment of monetary deductions or other liquidated damages, and relief from Developer Default, in each case to the extent they would not have been assessed or would not have occurred except due to a Relief Event.</p> <p>Developer has obligation to maintain detailed records related to any Relief Event claim, and the Owner has broad rights to audit them.</p>
<b>11</b>	<b>Changes in the Work; Alternative Technical Concepts</b>	
11.1	Owner Changes	<p>Subject to certain restrictions, the Owner has the right to direct an Owner Change at any time during the Term. An Owner Change may include alterations or changes in the Work, additions to scope, deletions to scope of the D&amp;C Work (up to a cap of 10% of the cost for the D&amp;C Work as set forth in the Schedule of Values as at the Effective Date), deletions to scope of the O&amp;M Services, and changes to requirements applicable to the Work. Owner Changes may include Renovations during the Operating Period, for which Developer or the Lead O&amp;M Firm must solicit competitive bids in accordance with policies and procedures of the Owner and applicable Laws.</p> <p>Developer is not required to implement any Owner Change to the extent it would: (a) result in a breach of Law or conditions of a Governmental Approval or revocation of same; (b) render any Project-required insurance policy void or voidable; (c) require a new Governmental Approval that is not reasonably obtainable; (d) materially and adversely affect the health and safety of any person; or</p>

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		<p>(e) materially and adversely affect the risk allocation and payment regime under the Agreement with respect to the Work.</p> <p>The Owner Change Procedure is set out in Appendix 21 (including determination of cost of an Owner Change). An Owner Change is a Relief Event, and therefore provisions of Article 10 with respect to any delayed Payments, time extension and other relief required as a result of an Owner Change also apply.</p> <p><b><i>Note: The University can increase or decrease the scope of O&amp;M services through the Owner Change process, subject to the limitations described above, including a limit on any proposed change that materially and adversely affects the risk allocation and payment regime.</i></b></p> <p><b><i>Note: Determination of costs for purposes of Owner Changes is limited to the types of Direct Costs and applicable mark-ups specified in Appendix 18. Most of these types of costs are also permitted under the University's standard contracts.</i></b></p>
11.2	Developer Change Proposals	<p>Developer may request Owner approval of modifications to the Technical Volumes by submitting a Developer Change Proposal setting forth its detailed estimate of the net cost and schedule impacts of the requested change. The Owner may accept or reject such request in its sole discretion. If accepted, The Owner is entitled to 50% of savings for D&amp;C and O&amp;M costs and 100% of financing cost savings associated with same.</p>
11.3	Deviations	<p>Developer may apply to Owner for approval of any deviation from, or noncompliance with, the requirements of the Technical Volumes in Work performed. The Owner must consider, but has no obligation to approve, such application. If an approved Deviation results in diminution of value of the completed Work or reduction in D&amp;C or O&amp;M costs, Owner is entitled to 100% of such diminution/reduction.</p>
11.4	Alternative Technical Concepts	<p>Developer is responsible for, and must make good faith efforts to obtain, all third party approvals required to implement an ATC. Developer must satisfy all conditions to the Owner's pre-approval of an ATC before implementing same, and must use good faith efforts to do so. If Developer is unable to obtain any required approval or fails to satisfy any condition to Owner's pre-approval of the ATC, it must give notice to the Owner and must comply with the baseline requirements at its cost with no relief. If the ATC represented additional Work, higher quality materials or would have required additional resources, the Owner is entitled to a credit for the reduced costs to Developer of reverting to the baseline requirements. If Developer uses any Unsuccessful Proposer's Work Product provided to Developer by the Owner, it does so at its sole risk.</p>

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12	Payments to Developer	
12.1	Milestone Payments / Milestones	<p><del>Developer is entitled to three Milestone Payments upon achievement of the corresponding Milestones and requisite invoicing for same, provided there exists no uncured Developer Default (or the applicable cure period has not expired, if the Developer Default is one for which the applicable cure period may be longer than 30 days): (1) First Milestone Payment of \$[50,000,000] upon delivery of requisite evidence of a minimum of \$100,000,000 in D&amp;C Work having been completed and invoiced by the design-builder and approved by Developer; (2) Second Milestone Payment of</del></p> <p><del>\$[125,000,000], less any First Delivery Facilities Deduction, upon issuance by the Owner of Certificates of Occupancy Readiness for all First Delivery Facilities; and (3) Third Milestone Payment of \$[125,000,000], less any First Delivery Facility Deduction not yet deducted and any Second Delivery Facilities Deduction, upon issuance by the Owner of Certificates of Occupancy Readiness for all Second Delivery Facilities and delivery by Developer to the Owner of a written notice with supporting documentation demonstrating that Developer has incurred State-Eligible Costs in excess of \$[100,000,000]. If Developer commits to accelerating the delivery of a portion of the Second Delivery Facilities in its Proposal, a portion of the Third Milestone Payment would be paid upon delivery of these Facilities.</del></p> <p><del>Note: Amounts of Milestone Payments and requisite State-Eligible Costs to be scaled downward in accordance with ITP based on Successful Proposer's Bid MAP.</del></p> <p><del>Note: Documentation demonstrating that Developer has incurred over \$100 million in State-Eligible Costs is required so that a corresponding amount of new state-eligible general revenue bond proceeds (external University financing) can be used in the aggregate to make the Third Milestone Payment.</del></p>
12.212.1	Final Acceptance Payment <u>Monthly Progress Payments</u>	<p><del>A Final Acceptance Payment of \$[300,000,000] is payable upon (a) issuance of a Certificate of Project Final Acceptance, (b) delivery by Developer to the Owner of a written notice with supporting documentation demonstrating that Developer has incurred State-Eligible Costs in excess of \$[400,000,000], and (c) requisite invoicing (but no earlier than June 1, 2020).</del><u>Monthly Progress Payments will be made by the Owner to Developer in the aggregate amount of up to \$585 million. Each Monthly Progress Payment will equal (a) the total amount payable by Developer to its design-build contractor for work associated with the Project incurred for each month (as certified and approved by the LTA), multiplied by a ratio equal to: \$585 million / (D&amp;C Contract Amount – \$150 million), less (b) any First Delivery Facility Deduction or Second Delivery Facility Deduction, if applicable.</u></p>

Article/ Section No.	Subject	Description
		<p><del><b>Note: Amounts of Final Acceptance Payment and requisite State-Eligible Costs to be scaled downward in accordance with ITP based on Successful Proposer's Bid MAP.</b></del></p> <p><del><b>Note: Documentation demonstrating that Developer has incurred over \$400 million in State-Eligible Costs is required so that a corresponding amount of new state-eligible general revenue bond proceeds (external University financing) can be used in the aggregate to make the Third Milestone Payment and the Final Acceptance Payment.</b></del> <u>Monthly Progress Payments will not commence until at least \$150 million in cumulative work has been invoiced by Developer's design-build contractor for work associated with the Project, as demonstrated by certified copies of Developer's draw requests and design-build contractor invoices approved by the LTA.</u></p>
<p><del>12.3,12.2,12.4</del> <u>12.3</u></p>	<p>Availability Payments and Partial Availability Payments</p>	<p>The Owner will make Partial Availability Payments to Developer between the date on which Occupancy Readiness is achieved for all First Delivery Facilities and the Substantial Completion Date or the Early Termination Date, whichever is earlier. Payment will be made through a combination of advance Partial Monthly Disbursements and Quarterly Settlement Amounts calculated in accordance with Appendix 6.</p> <p>The Owner will make Availability Payments to Developer between the Substantial Completion Date and the Termination Date, but commencing no earlier than the Early Completion Date (June 1, 2020). Each Availability Payment comprises a combined payment of AP Capital amount and AP O&amp;M amount. Payment will be made through a combination of advance Monthly Disbursements and Quarterly Settlement Amounts calculated in accordance with Appendix 6.</p> <p><b>Note: The cost of on-going operations and maintenance is built into the Availability Payment, which is subject to a specified cost escalator, protecting the University from uncertainty associated with maintenance, repair and renewal costs.</b></p> <p><b>Note: The University will start paying Partial Availability Payments to Developer once the First Delivery Facilities are delivered, <u>based on the ratio of ASF delivered</u>. The amount of the Partial Availability Payments will be increased upon delivery of the Second Delivery Facilities to <del>take into account the cost of providing O&amp;M Services for</del> <u>reflect</u> the additional <del>Facilities</del> <u>ASF delivered</u>. This approach allows <del>for Developer to be compensated for the cost of providing O&amp;M Services for the First Delivery Facilities and the Second Delivery Facilities without having to finance those costs</del> <u>Developer to reduce its financing costs by reducing the amount of construction period financing required</u>.</b></p>



Article/ Section No.	Subject	Description
<del>12.5</del> , <a href="#">12.4</a> , <del>12.6</del> <a href="#">12.5</a>	Disputed Amounts; Interest	The Owner has the right to dispute any amount of an invoice submitted by Developer under the Agreement, and will pay the undisputed portion and provide written reasons for any withheld portion.  Interest is payable on any late payment of an undisputed amount due and owing from a Party to the other Party at the Late Payment Rate (10% per annum or maximum rate permitted by law, whichever is less).
<del>12.7</del> <a href="#">12.6</a>	Delay Damages	Developer acknowledges and agrees that any Partial Availability Payment or Availability Payment, or portion thereof, not received by Developer as a result of a delay in achieving Occupancy Readiness of the First Delivery Facilities, the Second Delivery Facilities or Substantial Completion, as applicable (other than a delay for which Developer is entitled to compensation under Article 10), represents the liquidated amount of delay damages suffered by the Owner due to such delay.
<del>12.8</del> <a href="#">12.7</a>	Tax Allocation	Developer acknowledges that the Owner may fund the <del>Milestone</del> <a href="#">Monthly Progress</a> Payments <del>and the Final Acceptance Payment</del> with proceeds of tax-exempt bonds. For federal tax purposes, Developer agrees not to allocate proceeds of Developer's financing or equity investment to the Facilities in a manner that is inconsistent with any allocation by the Owner of the payments to the Facilities. Upon request, Developer will provide <del>certifications</del> <a href="#">information</a> regarding costs of development, operation and maintenance of the Facilities. Developer will not take the position for federal tax purposes that it is the owner or lessee of the Project or the Facilities.
<b>13</b>	<b>Lenders</b>	
		<p>The Owner, Developer and the Collateral Agent, on behalf of the Lenders, will have executed the Direct Agreement concurrently with execution of the Project Agreement. The Direct Agreement addresses, among other things, Lenders' step-in rights and their right to replace a defaulting Developer, as well as the Owner's option to purchase project debt in default.</p> <p><b><i>Note: A primary purpose of the Direct Agreement is to set out the Lenders' rights to receive notice of, and opportunity to step in and cure, Developer Defaults or to replace Developer if needed, before the Owner has a right to terminate the Project Agreement for Developer Default. The Direct Agreement does not give Lenders an interest in, or recourse to, University assets – the Lenders' security interests are limited to the assets of Developer and equity interests in Developer. The designated representative of Developer's Lenders is the direct party to the Direct Agreement on behalf of the Lenders.</i></b></p>



Article/ Section No.	Subject	Description
14	<b>Equity Transfers and Change of Control; Committed Investment Requirement</b>	
14.1, 14.2	Restrictions on Equity Transfers and Changes of Control	<p>Equity transfers and Changes of Control prior to the second anniversary of Substantial Completion require the Owner's prior written approval, in its sole discretion. An exception is made for any proposed Equity Transfer during such period by a purely financial Initial Equity Member that does not constitute a Change of Control, in which case the applicable standard is reasonable approval. If Developer sought the Owner's pre-approval of an equity transfer to a specified affiliate prior to submission of its proposal and the Owner pre-approved such transfer, such transfer will be permitted following the Effective Date without the requirement of further Owner approval, subject to any conditions imposed on such pre-approval. Transfers/transactions that fall within an exception to the definition of Change of Control are allowed at any time, subject to specified notice requirements.</p> <p>Equity transfers and Changes of Control following the second anniversary of Substantial Completion are subject to the Owner's prior written approval, which may not be unreasonably withheld.</p> <p>The Owner has 60 days to approve or disapprove in writing following receipt of a request for approval and required supporting documentation.</p> <p><b>Note: Equity transfers and changes of control in Developer do not alter Developer's contractual obligations under the Agreement or Developer's equity members' minimum equity commitment (see below). The restrictions on equity transfers and changes of control allow the University to ensure that the initial equity member(s) of Developer at the beginning of the Project remain committed to the Project until the riskiest phase (i.e., the design and construction) has been completed. Even after completion of construction, the University retains the right to reasonably approve any equity transfers or changes of control so that it may ensure the quality of any replacement equity member(s) throughout the term of the Agreement.</b></p>
14.3	Minimum Equity Requirement	<p>During the Construction Period, Developer must maintain a Construction Equity Ratio of at least 10%, with limited exceptions. Construction Equity Ratio is the ratio between (a) the Committed Equity Investment at the time and (b) the sum of Committed Equity Investment at the time and the amount of Developer's private debt (including short-term construction financing) scheduled to be outstanding at the time.</p> <p><b>Note: The 10% requirement may equal up to \$80 million at the time of Substantial Completion. Under this delivery model, lenders typically impose constraints on Developer to limit equity dividends and "cash-out" during the operating period to ensure Developer</b></p>

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		<b><i>and its equity investors' incentives are aligned with long term performance. Those constraints would be customized to the private debt structure bid by the successful Proposer.</i></b>
<b>15</b>	<b>Financial Model</b>	
		The Initial Financial Model is included in Attachment 2 to the Project Agreement. The Initial Financial Model and any subsequent Financial Model must be escrowed. Financial Model Updates are required whenever a specified event occurs during the term (e.g., Relief Event for which Owner owes compensation, Refinancing with shared Refinancing Gain). Financial Model Updates must be audited by an independent audit firm prior to becoming part of the Agreement.
<b>16</b>	<b>Project Financing and Refinancing</b>	
		<p>Developer is solely responsible for all financing required for the Work, with no recourse to the Owner (except the Payments).</p> <p>The Owner's prior written approval is required for any Refinancing except an Exempt Refinancing or Rescue Refinancing. Developer must provide <del>at least 60 days'</del> advance notice of any Exempt Refinancing or Rescue <u>Refinancing except an Exempt Refinancing under clause (d) of the definition of Exempt Refinancing (e.g., syndication or disposition of Lender's interests), for which Developer must provide notice within 7 days following the</u> Refinancing. Developer must provide requisite documentation and information with respect to Refinancings.</p> <p>Refinancings other than Exempt Refinancings, Rescue Refinancings and Nominal Refinancings are subject to the Owner's prior written approval in its reasonable discretion.</p> <p>Nominal Refinancings are subject to the Owner's prior written approval in its sole discretion.</p> <p>The Committed Equity Investment requirements must continue to be satisfied and a Refinancing may not increase the Lenders' Liabilities by more than 10% except as approved by the Owner in its sole discretion.</p> <p>For any Refinancing other than an Exempt Refinancing, the Owner is entitled to 50% any Refinancing Gain calculated in accordance with Appendix 11</p> <p><b><i>Note: Refinancings do not alter Developer's contractual obligations under the Agreement or Developer's equity members' minimum equity commitment (see above).</i></b></p>

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17	<b>Insurance; Payment and Performance Security, and Indemnity</b>	
17.1	Insurance Policies and Requirements; Unavailability; Premium Benchmarking	<p>The Owner will procure and maintain property insurance following Occupancy Readiness/Substantial Completion, except if claims and loss experience due to negligence, willful misconduct or breach of applicable law or contract <del>of</del> <u>by Developer or</u> any Developer-Related Entity adversely impacts the Owner or its policy, the Owner may require Developer to procure and maintain a replacement property policy for the Project on the <del>same</del> <u>applicable</u> terms and conditions <del>as required</del> <u>set forth in Appendix 8</u> for the Owner-Provided Insurance Policy. Such replacement policy is a Developer-Provided Insurance Policy for the purposes of the Agreement. From and after the effective date of any such replacement policy, the Owner will pay to Developer the Base Project Property Insurance Cost, which will be subject to the insurance premium benchmarking provisions.</p> <p>Developer must procure and maintain the remainder of the Project policies in accordance with Section 17.1 and Appendix <del>8-8</del>, <u>and in the case of MID Required Insurance, in accordance with the minimum coverage requirements and terms of coverage set forth in the MID Agreement.</u> Developer may use a Controlled Insurance Program during the Construction Period. Developer is liable for deductibles and self-insured retentions (except those under (a) the Developer-Provided Insurance Policies arising from the active negligence of the Owner, and (b) the Owner-Provided Insurance Policy, except any arising from Developer fault or Vandalism up to the Annual Vandalism Deductible), and must include specified terms/conditions in any endorsements and waivers.</p> <p>Every two years during the <del>Term</del> <u>Operating Period</u>, the Owner and Developer will review and, if appropriate, make adjustments to the Developer-Provided Insurance Policy limits.</p> <p>If any required insurance policy becomes commercially unavailable, the Owner may self-insure or terminate the Agreement.</p> <p>Premiums for Operating Period insurance policies for which Developer is responsible for procuring and maintaining will be compared against a benchmark that is escalated 3% per annum and the Owner will bear 85% of any increases above the benchmark and have the benefit of 85% of any decreases below the benchmark, as adjustments to the MAP.</p> <p>The Owner will self-insure Earthquake and Terrorism risk. Developer will be entitled to Direct Costs to repair or replace tangible property damage to the Project caused by <u>any such</u> Earthquake or Terrorism, but not for its tools, machinery, equipment, etc. that are not intended for permanent installation into the Project.</p> <p><b>Note: The insurance provisions have been developed in consultation with OP Risk</b></p>

Article/ Section No.	Subject	Description
		<b>Services.</b>
17.2	Performance and Payment Bonds	<p>As a condition precedent to NTP 1, Developer must deliver Performance and Payment Bonds, each in <del>the aggregate amount of the Milestone Payments and the Final Acceptance Payment</del><u>an amount equal to the D&amp;C Contract Amount</u>. The Owner will be a multiple-obligee under the bonds. The required forms of the bonds and multiple obligee riders are set forth in Appendix 15.</p> <p><del><b>Note: The Performance Bond and Payment Bond amounts are set as the sum of the Milestone Payments and Final Acceptance Payment amounts, which is \$600 million scaled downward as described in Sections 12.1 and 12.2 above. The bonds have been sized to exceed the total amount of payments made by the University to Developer at any given time prior to Substantial Completion.</b></del></p> <p><del><b>For performance security, the Performance Bond amount is sufficient as the University will also have security equal to the value of work in progress (including materials procured but not yet integrated) but not yet paid for by the University. The amount of the Performance Bond also exceeds the Project's maximum probable loss.</b></del></p> <p><del><b>For payment security, the Payment Bond amount is sufficient because the University also has the benefit of the protections discussed at Section 8.12 above.</b></del></p>
17.3	Letters of Credit	<p>If Developer provides a letter of credit where permitted under the Agreement (i.e., in lieu of the Renewal Work Reserve Account or the Handback Requirements Reserve Account), it must be issued by an Eligible LC Issuer and meet the other requirements of Section 17.3 and be substantially in the form set forth in Appendix 14 (provided any deviation from such form is subject to the Owner's approval, in its reasonable discretion).</p>
17.4	Developer Indemnities	<p>Developer indemnifies the Indemnified Parties for claims, Losses, etc. asserted or incurred by or award to any third party to the extent caused by various specified events, including breach or alleged breach by Developer of the Contract Documents or Principal Developer Document, failure or alleged failure to comply with Governmental Approvals and applicable Laws, IP infringement, negligence, willful misconduct or breach of law by <u>Developer or</u> any Developer-Related Entity, stop payment notices/liens filed in connection with the Work, actual or threatened Releases of Contaminated Materials by <u>Developer or</u> any Developer-Related Entity, etc. <u>Developer assumes the defense and indemnity of MID and its officers, agents and employees as required under the MID Agreement.</u></p>

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<b>18</b>	<b>Representations and Warranties</b>	
18.1	Developer Representations and Warranties	Developer provides certain representations and warranties with respect to organization, authorization, enforceability, no challenging actions, requisite licensing, the Initial Financial Model, investigations of Surface and subsurface conditions, no debarment/suspension and no organizational conflicts of interest, intellectual property infringement, etc.
18.2	Owner Representations and Warranties	The Owner provides certain representations and warranties with respect to formation/existence, authorization, no violation or default, and no challenging actions.
<b>19</b>	<b>Default; Suspension of Work; Suspension for Delinquency</b>	
19.1.1	Developer Default	Developer Defaults are set forth in Section 19.1.1, including failure to satisfy conditions precedent to NTP 1 within 30 days of the Effective Date, failure to commence Construction Work by the Construction Commencement Deadline ( <i>i.e.</i> , 150 days after Effective Date, subject to adjustment for Relief Events), failure to achieve Occupancy Readiness of all First Delivery Facilities by the First Delivery Facility Long Stop Date, failure to achieve Substantial Completion by the Substantial Completion Long Stop Date, Persistent Developer Noncompliance, Persistent Developer Breach, and insolvency or bankruptcy.
19.1.2	Cure Periods	<p>Applicable cure periods for Developer Defaults vary from zero to 30 days, or in limited circumstances, a further cure period is allowed, provided Developer is taking meaningful steps to cure a default that cannot be completed within the specified period. A cure period begins upon Developer's receipt of the Owner's written notice of Developer Default (except no notice is required for a Developer Default arising from a conviction of Developer, <u>or</u> any <del>Equity Member or</del> Qualified Investor of fraud, bribery, etc. in connection with bidding on public works contracts).</p> <p>Developer Defaults for which there is no cure period are : insolvency/bankruptcy of Developer,; failure to comply with written suspension of Work or Project Right of Entry order,; failure to meet certain Completion Deadlines (including the First Delivery Facilities Long Stop Date and the Substantial Completion Long Stop Date),; Persistent Developer Noncompliance,; conviction of Developer, <u>or</u> any <del>Equity Member or</del> Qualified Investor of fraud, bribery, etc. in connection with bidding on public works contracts,; a false certification <u>submitted</u> by Developer <del>or Equity Member(s)</del>,</p>

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		<u>any Qualified Investor or any other Affiliate of Developer</u> regarding engagement in investment activities in Iran <del>or any</del> ; <u>a false Darfur Contracting Act Certification submitted by Developer or any Equity Member; Developer, any Equity Member or any Affiliate of either</u> of them being a “scrutinized” company as defined in Section 10476 of the Public Contract Code;; improper use of funds in the Handback Requirements Reserve Account;; and Persistent Developer Breach.
19.2	Owner Remedies	<p>The Owner has a right to terminate the Agreement if a Developer Default has not been cured within any applicable cure period.</p> <p>The Owner also have remedies specific to certain circumstances, such as a Developer Default under Section 19.1.1.7 (use of Project in violation of Contract Documents), for which Owner has an immediate right of entry to cure, and to undertake or direct work for failure to meet Safety Standards or timely performance Safety Compliance.</p> <p>Upon occurrence of a Developer Default and expiration of any applicable cure period without full cure, subject to the Lenders’ rights under the Direct Agreement, the Owner has step-in rights under Section 19.2.4.</p> <p>Subject to the Lenders’ rights under the Direct Agreement, the Owner has the right to suspend the Work (<u>including the Project Right of Entry</u>) in whole or in part – if due to a failure of Developer to comply with its obligations under the Contract Documents, with no liability to Developer; and if for other reasons at its discretion, such suspension is an Owner-Caused Delay and therefore a Relief Event.</p>
19.2.10	Limitation on Developer’s Liability for Certain Damages	Developer is not liable to the Owner for punitive damages or indirect, incidental or consequential damages arising under any theory of liability, subject to certain exceptions such as Losses covered by insurance proceeds, Losses arising out of fraud, criminal conduct, intentional misconduct, reckless or bad faith of <u>Developer or</u> any Developer-Related Entity, Losses arising out of Releases of Contaminated Materials by <u>Developer or</u> any Developer-Related Entity, and any amounts Developer owes under the express provisions of the Contract Documents.
19.3	Owner Default; Cure Periods;	<p>Owner Defaults are: (1) failure to make payment of undisputed amounts due under the Agreement when due; (2) any material breach of representation or warranty made by the Owner under Section 18.2; and (3) the Owner or other Governmental Entity confiscates, condemns, appropriates, etc. the Project or material portion thereof, excluding any exercise of a right of termination under the Agreement.</p> <p>For an Owner Default under (1), the cure period for failure to pay (a) any Monthly Disbursement or</p>

Article/ Section No.	Subject	Description
		<p>Partial Monthly Disbursement is 30 days after Developer delivers written notice of such Owner Default, and (b) any other payment due Developer is 90 days after Developer delivers written notice of such Owner Default.</p> <p>For an Owner Default under (2) or (3), the cure period is 30 days after written notice, subject to a longer cure period as is reasonably necessary to cure, up to <del>180</del>120 days, if the cure cannot be completed with diligence within the 30 days and the Owner immediately commenced meaningful steps to cure.</p>
19.4, 20.4.1	Developer Remedies	<p>Developer has a right to terminate the Agreement for an Owner Default upon expiry of the applicable cure period without cure, effective immediately upon delivery of a written notice of termination to the Owner.</p> <p>If Developer does not terminate the Agreement, Developer may submit a Relief Event claim under Article 10 and, for an uncured Owner Default for non-payment, Developer has a right to suspend performance of the Work until such default is cured.</p> <p>Developer may exercise any other rights and remedies available under the Agreement or available at Law.</p>
19.4.3	Limitations on Owner's Liability	<p>The Owner is not liable to Developer for punitive damages or indirect, incidental or consequential damages arising under any theory of liability, subject to certain exceptions such as Losses covered by insurance proceeds for which the Owner self-insured, Losses arising out of fraud, criminal conduct, intentional misconduct, reckless or bad faith <del>of any Developer-Related Entity</del> <u>on the part of the Owner</u>, and any amounts the Owner owes under the express provisions of the Contract Documents.</p>
<b>20</b>	<b>Termination</b>	
20.1 – 20.4, 20.9	Termination; Exclusive Termination Rights	<p>Sections 20.1 through Section 20.4 set forth the exclusive termination rights of the Parties.</p> <p><b>Termination for Convenience:</b> The Owner may, in its sole discretion, terminate the Agreement in whole upon not less than 90 days' written notice if it determines that such termination is in its best interest.</p> <p><b>Termination for Extended Relief Event:</b> <del>Developer</del> <u>Either Party</u> may, on written notice to the <del>Owner</del> <u>other Party</u>, conditionally terminate the Agreement <u>if</u>:</p>

Article/ Section No.	Subject	Description
		<p>(1)(a)<del>(i) an Owner-Caused</del> <u>a</u> Relief Event has occurred which will result in a delay in achieving Substantial Completion beyond 180 days of Relief Event Delay or such 180 <del>days have expired or (ii) any Relief Event other than an Owner-Caused Relief Event has occurred which will result in a delay in achieving Substantial Completion beyond 360 days of Relief Event Delay or such 360</del> days have expired, or (b) if the written notice is given after the Substantial Completion Date, all or substantially all of the Facilities are inoperable for 270 days or more and not because of another concurrent delay; (2) Developer could not have mitigated or cured with diligent efforts; (3) the result is continuing at time of delivery of the notice; and (4) the notice contains the requisite information.</p> <p><del>The Owner may, on written notice to Developer, conditionally terminate the Agreement if: (1) (a) a Relief Event has occurred which will result in a delay in achieving Substantial Completion beyond 180 days of Relief Event Delay or such 180 days have expired, or (b) the written notice is given after the Substantial Completion Date, all or substantially all of the Facilities are inoperable for 270 days or more and not because of another concurrent delay; (2) the result is continuing at time of delivery of the notice; and (3) the notice contains the requisite information.</del></p> <p>If insurance proceeds are available and Parties agree to a restoration plan, neither Party may elect to so terminate.</p> <p>If the Owner delivers such notice, Developer may notify the Owner that it elects to continue the Agreement and the Owner will have no obligation to compensate Developer for costs or loss of Payments or any other relief arising out of the Relief Event and incurred after the date of the Owner's notice of conditional termination (except if the Relief Event occurred prior to the Substantial Completion Date, Developer is entitled to an extension of the applicable Completion Deadlines). If Developer delivers the conditional notice of termination, the Owner may elect to continue the Agreement for up to 180 days (or more if Parties agree) and pay Developer Direct Costs to repair/restore any physical damage, including Delay Costs after Developer's conditional notice of termination, and <del>MAP prorated</del> <u>the amount of Availability Payments or Partial Availability Payments, as applicable, that Developer would have received during such extended period absent the Relief Event, prorated,</u> less avoided O&amp;M and other expenses.</p> <p><b>Termination for Developer Default:</b> See 19.2 above.</p> <p><b>Termination for Owner Default:</b> See 19.4 above.</p> <p><b>Termination for Suspension of Work:</b> If the Owner issues a suspension order that is not due to Developer's fault for more than 270 days, Developer has a right to terminate the Agreement upon written notice with immediate effect.</p> <p><b>Termination by Court Ruling:</b> Upon issuance of a final order by a court of competent jurisdiction</p>



Article/ Section No.	Subject	Description
		<p>after exhaustion of all appeals (a) that the Agreement is void, voidable and/or unenforceable or impossible to perform for reasons beyond the reasonable control of Developer or (b) upholding the binding effect of a Change in Law that causes impossibility of performance of a fundamental obligation by, or exercise of a fundamental right of, Developer or Owner, the final court order will be treated as the notice of termination.</p> <p>Termination Compensation due to Developer will depend on the type of termination – applicable formulae are set forth in Sections 20.1 through 20.4. Broadly speaking: (a) if termination is for convenience, Owner Default, extended Owner-Caused Relief Event or discretionary suspension of work, Lenders and equity investors will be made whole; (b) if termination is for Developer Default, if prior to Substantial Completion, termination compensation (for work performed but not yet paid) will be calculated such that (i) the Owner does not pay more to rectify and deliver the Project than it otherwise would have, absent a Developer Default, and (ii) equity does not receive any compensation, or if after Substantial Completion, termination compensation will equal 80% of the Developer's debt less rectification costs, account balances, etc.; and (c) if termination is for Extended Relief Events or by court ruling other than for Owner fault, Lenders are made whole and equity is repaid its nominal value, without additional return on investment.</p>
20.5 – 20.8	Termination Procedures and Duties, etc.	Detailed termination procedures and Developer obligations are set forth in Section 20.5. Developer obligations include providing a transition plan for orderly transition of Work, demobilization and transfer of control of the Project <del>Site</del> , the <del>Ancillary Site (if prior to Project Final Acceptance)</del> <a href="#">Work Site</a> and the Facilities to the Owner, relinquishing and surrendering full control and possession of the Project, etc. to the Owner on the Termination Date in at least the condition required by the Handback Requirements, executing and delivering a written assignment of any Key Contracts the Owner elects to continue (if all Work has not yet been completed), and delivery of other information, documents, assignments, releases, etc.
21	<b>Reserved Rights</b>	
		<p>The Owner reserves all Business Opportunities related to the Project, the <del>Project</del><a href="#">Owner-Provided Work Site</a>, <del>the Ancillary Site</del> and <a href="#">all improvements therein (including the Facilities) and the Bellevue Intersection Improvements</a>, and all ancillary or collateral use thereof, except to the extent such rights are expressly granted to Developer under the Agreement.</p> <p><b><i>Note: The Agreement expressly grants to Developer the right to develop the Project; no business opportunities have been granted to Developer.</i></b></p>

Article/ Section No.	Subject	Description
<b>22</b>	<b>Records; Intellectual Property; D&amp;C Pricing Documents</b>	
22.1, 22.2	Project Records; Audits	<p>Developer must maintain all Project-related records and documents in Merced or other location approved by the Owner. All D&amp;C-related records must be kept until the later of ten years after Substantial Completion and when the last audit related to the D&amp;C Work (and timely commenced) is completed. All O&amp;M-related records must be kept until the later of seven years after the Termination Date and when the last audit related to the O&amp;M Services (and timely commenced) is completed.</p> <p>The Owner has broad audit rights with respect to the Project Records.</p> <p><b><i>Note: Records that are essential to the University such as as-built drawings are required to be turned over to the University on Termination Date.</i></b></p>
22.3	Public Record Act	<p>Developer must maintain and allow public access to Project Records subject to the Public Records Act on the same terms and conditions that the Owner would do so as provided by law and on the Termination Date, transfer to the Owner all public records in Developer's possession and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.</p> <p>Developer acknowledges that all Submittals, records, D&amp;C Pricing Documents, etc. in the Owner's possession are subject to the Public Records Act. Developer must label as "CONFIDENTIAL" any proprietary information and cite the relevant provision exempting such material from public disclosure. Owner will use reasonable efforts to notify Developer of a request for public disclosure of any such materials, to allow Developer to assert an exception from disclosure requirements. If a legal action is filed against the Owner to disclose, Owner will promptly notify Developer and Owner's sole role will be as custodian until otherwise ordered by a court, and Developer is responsible for prosecuting or defending such action (although Owner reserves the right to intervene/participate as it deems necessary or desirable).</p>
22.4, 22.5	Intellectual Property	<p>Project Intellectual Property comprises Subject Intellectual Property, Developer Intellectual Property and Third Party Intellectual Property.</p> <p>Subject Intellectual Property means Intellectual Property created, authored and/or invented under or for the purposes of the Proposal, the Contract Documents and/or the Project. Developer assigns to the Owner all rights, title and interest in and to Subject Intellectual Property, and the Owner grants to Developer a limited license to use the Subject Intellectual Property for incorporation into the Project and performance of the Work.</p>

Article/ Section No.	Subject	Description
		<p>Developer Intellectual Property means Intellectual Property developed by Developer or its Affiliates or Contractors either prior to the Effective Date or independently of the Contract Documents and is incorporated into the Project. Developer grants to the Owner an irrevocable, perpetual, transferable (solely to a permitted Owner's assignee), fully paid-up right and license to use Developer Intellectual Property in connection with the Owner Uses (<i>i.e.</i>, uses in connection with the Work, Project, Facilities and Systems, including maintenance, repair, renewal work and renovations following the Termination Date).</p> <p>Third Party Intellectual Property means Intellectual Property owned by any Person unrelated to Developer or its Affiliates or Contractors and which is incorporated into the Project. Developer must secure licenses in the name of the Owner in connection with the Owner Uses (and may not incorporate any Third Party Intellectual Property without first securing such licenses), and must use reasonable efforts to (i) obtain the Owner's prior written approval of terms and conditions of such licenses, (ii) identify and disclose to the Owner all Third Party Intellectual Property, and (iii) obtain the consent of the relevant third parties to deposit the IP into an Intellectual Property Escrow.</p> <p>Developer must (a) deliver to the Owner all IP Materials (software, source code and other intellectual property and related documentation, as integrated into Project Intellectual Property), work product, documents, results and related materials created in the development of Subject Intellectual Property, and (b) either deliver to the Owner or deposit into an Intellectual Property Escrow all IP Materials for Developer Intellectual Property and Third Party Intellectual Property.</p>
22.6	D&C Pricing Documents	Within 10 days after the Effective Date and as a condition precedent to NTP 1, Developer must deliver all D&C Pricing Documents to the Owner. D&C Pricing Documents may only be unsealed and reviewed with Developer's reasonable consent, with notice in connection with any claim, DRB hearing or litigation related to D&C Work, and without consent in response to a Public Records Act request.
<b>23</b>	<b>Legal Requirements</b>	
23.1	Suspension and Debarment	Developer must deliver to the Owner not later than January 31 of each year through Project Final Acceptance, and upon Project Final Acceptance, signed certifications regarding suspension, debarment, etc. from Developer and each Affiliate of Developer and each Contractor whose Contract amount equals or exceeds US\$25,000.

Article/ Section No.	Subject	Description
<b>24</b>	<b>Assignment and Transfer</b>	
24.1	Restrictions on Developer	Developer may not assign or encumber the Developer's Interest without the Owner's prior written approval, in its sole discretion, except to Lenders for security, to any approved (or deemed approved) Substitute Entity under the Direct Agreement. Any assignment in violation of the provision is null and void <i>ab initio</i> and Owner may declare any such attempted action to be a material Developer Default.
24.2	Restrictions on Owner	The Owner may assign all or any portion of its rights, title and interest in and to, and obligations and liabilities under (if applicable), the Contract Documents, bonds and any other security (a) to any Person that succeeds to the powers and authority of the Owner in its sole discretion without consent, and (b) to others with the prior written consent of Developer. Any assignee must have a credit rating equal to or better than the Owner's at the time of assignment. Any assignment in violation of this provision is null and void <i>ab initio</i> .
<b>25</b>	<b>Dispute Resolution Procedures</b>	
		<p>All Disputes are subject to the Dispute Resolution Procedures except Owner decisions permitted to be made in its sole discretion. The Owner's initial determination is binding pending any final determination of the Dispute unless otherwise expressly provided. Owner decisions permitted to be made in its good faith discretion are binding unless finally determined by clear and convincing evidence that it was arbitrary or capricious.</p> <p>With the exception of Disputes over key Owner determinations discussed below, Disputes that are not resolved between the Parties are referred to the Disputes Review Board (DRB) for a non-binding decision. Disputes that remain unresolved after issuance of the DRB's recommendations regarding such Disputes may be resolved by litigation. Timely submission of a Dispute to the DRB is a condition precedent to a Party having the right to proceed to litigation of such unresolved Dispute, provided that a disputing Party may proceed directly to litigation if a failure by the other Party, or such other Party's selected DRB member, to select a replacement DRB member as required under Appendix 9-B delays by more than 30 days the disputing Party's ability to advance the Dispute to the next stage within the applicable time period set forth in Section 25.</p> <p>Disputes over Owner determinations regarding (i) achievement of Occupancy Readiness of <del>the</del><u>all</u> First Delivery Facilities, Occupancy Readiness of <del>the</del><u>all</u> Second Delivery Facilities, <del>Milestones, or</del> Substantial Completion, <del>Facility Final Acceptance, or Project Final Acceptance,</del> (ii) <u>failure by Developer to complete the Renewal Work in accordance with the then current Renewal Work</u></p>

Article/ Section No.	Subject	Description
		<p><u>Schedule and applicable Technical Requirements, (iii)</u> the Renewal Amount, or <del>(iv)</del> satisfaction of Handback Requirements, are subject to accelerated Dispute Resolution Procedures. Any DRB recommendations regarding such Disputes are provisionally binding pending the results of any litigation. The DRB must retain an Independent Certifier within a specified period in advance of any determination regarding Occupancy Readiness of <del>the all</del> First Delivery Facilities, Occupancy Readiness of <del>the all</del> Second Delivery Facilities, <u>or</u> Substantial Completion <del>or Project Final Acceptance</del>. The Independent Certifier will be required to provide its report to the DRB regarding its assessment of whether the applicable conditions precedent have been satisfied, which the DRB will consider if there is a dispute between the Parties as to whether the applicable conditions precedent have been satisfied. If Developer disagrees with any such determination by the Owner, Developer may dispute the Owner's determination under an abbreviated dispute resolution procedure which will require the DRB to render its decision within a specified abbreviated period of filing of such dispute. <u>The Owner will be responsible for the cost of the Independent Expert.</u></p> <p>During the course of any Dispute Resolution Procedures, Developer must continue performing the Work, including any Work that is the subject of the Dispute, as directed by the Owner in accordance with the Contract Documents.</p> <p>See Appendix 9 below regarding form of DRB Agreement and DRB procedures.</p>
26	Miscellaneous	
		<p>The Agreement contains various miscellaneous provisions, including provisions providing for governing law of California and venue for any litigation as a State court of competent jurisdiction in Alameda County, CA.</p>

Appendix No.	Subject	Description
Appendix 1	Abbreviations and Definitions	
		Appendix 1 sets forth meanings/definitions for abbreviations and capitalized terms used in the Project Agreement, Appendices and Technical Requirements. Additional abbreviations and capitalized terms used only in the Technical Volumes are defined in Volume II.
Appendix 2	Developer's Proposal Commitments	
		<p>Select portions of Developer's Proposal will be excerpted and attached as Appendix 2 to the Agreement. Anything so attached becomes a contractual requirement.</p> <p><b>Note: The excerpts that become contractual requirements <u>may will</u> include: (a) key technical submittals, such as Developer's <del>project master plan, preliminary project schedule, master sequencing plan, project building designs, project management plan, operations and maintenance plan,</del> <u>Project Master Plan, Conceptual Project Building Designs, Use Type Architectural Drawings, Project Management Plan, Operations and Maintenance Plan, Sustainability Plan Narrative</u> and any Alternative Technical Concepts; (b) Design and Construction Schedule of Values (Form F); (c) <u>Labor Strategy Narrative</u>; (d) <u>Bid Financial Model</u>; (e) <u>State-Eligible Cost Summary Tables</u>; (f) <u>Equity Members, Contractors and Key Personnel Commitment (Form G)</u>; and (<del>dg</del>) certifications.</b></p>
Appendix 3	First and Second Delivery Facilities Deductions	
		This Appendix sets forth the formulas for calculating the liquidated damages to be assessed for late delivery of (a) the First Delivery Facilities (First Delivery Facilities Deduction) and (b) the Second Delivery Facilities (the Second Delivery Facilities Deduction).
Appendix 4	Site Maps	
4-A	Project Site Map	The limits of the Project Site are delineated in this map.
4-B	Ancillary Site Map	The limits of the Ancillary Site are delineated in this map.
4-C	Bellevue Intersection ROW <u>Site Map</u>	The <u>limits of the</u> Bellevue <del>Lake Road</del> Intersection <del>right of way is</del> <u>Site are</u> delineated in this map.

Appendix No.	Subject	Description
<a href="#">4-D</a>	<a href="#">Central Plant Expansion Site Map</a>	<a href="#">The limits of the Central Plant Expansion Site are delineated in this map.</a>
<a href="#">4-E</a>	<a href="#">Borrow Site Map</a>	<a href="#">The limits of the Borrow Site are delineated in this map.</a>
<b>Appendix 5</b>	<b>Noncompliance Points Table</b>	
		See Article 7 above.
<b>Appendix 6</b>	<b>Payment Mechanism</b>	
		<p>This Appendix sets forth the methodology and related requirements for: (a) calculating (i) the Partial Maximum Availability Payment (<a href="#">PMAP</a>), Partial Monthly Disbursements and Partial Quarterly Settlement Amounts, and (ii) the Maximum Availability Payment (<a href="#">MAP</a>), Monthly Disbursements and Quarterly Settlement Amounts; and (b) calculating and assessing monetary deductions against the Partial Availability Payments and Availability Payments, as applicable, for Availability Failures and Performance Failures during the provision of O&amp;M Services, together with related procedural requirements. <a href="#">Deductions from Partial Availability Payments are capped per month at 90% of the monthly PMAP amount. Deductions from Availability Payments are capped per month at 90% of the monthly MAP amount. Developer may seek temporary relief from deductions for Recurrence Periods following the initial Temporary and Permanent Cure Periods have expired if the failure is of such a nature that it cannot be cured with Developer's best efforts in accordance with Best Management Practice, and the Owner may approve such relief in its reasonable discretion.</a></p>
<b>Appendix 7</b>	<b>List of Initial Funding Agreements and Initial Security Documents</b>	
		<b><i>[TO BE COMPLETED POST-SELECTION OF WINNING PROPOSER, REFLECTING ITS FINANCING DOCUMENTS]</i></b>
<b>Appendix 8</b>	<b>Insurance Requirements</b>	
		This Appendix sets forth certain terms and conditions applicable to required Project insurance policies.

Appendix No.	Subject	Description
<b>Appendix 9</b>	<b>Disputes</b>	
9-A	Form of Disputes Review Board Agreement	The form of DRB Agreement which DRB members will be required to execute is attached as Appendix 9-A.
9-B	Disputes Review Board Procedures	The DRB procedures, including qualification requirements and process for selection and replacement of DRB members, are set forth in Appendix 9-B.
<b>Appendix 10</b>	<b>Initial Designation of Authorized Representatives</b>	
		<i>[TO BE COMPLETED POST-SELECTION OF WINNING PROPOSER]</i>
<b>Appendix 11</b>	<b>Calculation and Payment of Refinancing Gains</b>	
		This Appendix describes how Refinancing Gains will be calculated for purposes of determining the sharing of any Refinancing Gain arising from a Refinancing permitted under Section 16.3 of the Agreement.
<b>Appendix 12</b>	<b>Utilities Survey</b>	
		A utilities survey is attached as Appendix 12 for purposes of baselining known Utilities.
<b>Appendix 13</b>	<b>Form of Direct Agreement</b>	
		See Section 13 above.
<b>Appendix 14</b>	<b>Form of Letter of Credit</b>	
		This Appendix sets forth the required form of letter of credit if Developer elects to deliver any in lieu of the Renewal Work Reserve Account or the Handback Requirements Reserve Account.
<b>Appendix 15</b>	<b>Forms of Performance Bond, Payment Bond and Multiple Obligee Rider</b>	
15-A	Form of	This Appendix sets forth the required form of Performance Bond.



Appendix No.	Subject	Description
	Performance Bond	
15-B	Form of Payment Bond	This Appendix sets forth the required form of Performance Bond.
15-C.1	Form of Multiple Obligee Rider – Performance Bond	This Appendix sets forth the required form of multiple obligee rider for the Performance Bond.
15-C.2	Form of Multiple Obligee Rider – Payment Bond	This Appendix sets forth the required form of multiple obligee rider for the Payment Bond.
<b>Appendix 16</b>	<b>Intellectual Property License</b>	
		This Appendix sets forth additional requirements with respect to third party software licenses and grants to Developer a non-exclusive license to use the Owner Proprietary Information on specified terms and conditions.
<b>Appendix 17</b>	<b>Energy Utilities Management</b>	
		This Appendix identifies compliance and energy usage standards.
<b>Appendix 18</b>	<b>Direct Costs</b>	
		<p>This Appendix sets forth what types of costs may be included in Direct Costs (for purposes of calculating any additional compensation to which Developer may be entitled due to a Relief Event), what types of costs are excluded, and the permitted mark-ups.</p> <p><b><i>Note: This Appendix provides the University with certainty regarding additional compensation payable to Developer in the event of an Owner Change or other Relief Event by allowing only specified types of direct costs and mark-ups.</i></b></p>

Appendix No.	Subject	Description
Appendix 19	<b>Baseline Contaminated Materials Report</b>	
		Four Phase 1 Preliminary Site Assessment due diligence reports are attached as Appendix 19 for purposes of baselining Known Contaminated Materials for the Project Site and Ancillary Site.
Appendix 20	<b>First and Second Delivery Facilities</b>	
20-A	First Delivery Facilities	This Appendix sets forth (a) the types and quantities (in ASF) of facilities comprising First Delivery Facilities and (b) the applicable schedule and amounts of liquidated damages for late delivery.
20-B	Second Delivery Facilities	This Appendix sets forth (a) the types and quantities (in ASF) of facilities comprising the Second Delivery Facilities and (b) the applicable daily liquidated damages amounts for late delivery.
Appendix 21	<b>Owner Change Procedure</b>	
		<p>This Appendix sets forth the Owner Change Procedure, including Developer obligations to provide a Preliminary Change Estimate and keep records, the method of calculation of the net cost impact of an Owner Change, the method of payment, agreement and issuance of a Change Order, provisions dealing with any disagreements on a Preliminary Change Estimate, and procedures for Owner's Unilateral Change Orders.</p> <p><b><i>Note: The Owner Change Procedure applies to Owner Changes relating to both the D&amp;C Work and the O&amp;M Services, including any Renovations during the Operating Period. Competitive bids must be sought for any Renovation work (see Section 11.1 above).</i></b></p>
Appendix 22	<b>SBE/DVBE Self-Certification Form</b>	
		Attached as Appendix 22 is the form of SBE/DVBE Self-Certification Form that must be completed and signed by each entity claiming an exemption from the skilled workforce requirements in Section 8.10 or for purposes of counting toward the small business goals in Section 8.11.
Appendix 23	<b>Modifications to Project Commitments</b>	
		This Appendix sets forth certain exceptions to Developer's assumption of the Owner's obligations and liabilities under the Project Commitments.

Appendix No.	Subject	Description
Appendix 24	Form of Early Works Agreement	<p>This Appendix sets forth the form of Early Works Agreement, which will be executed by the Owner and the Successful Proposer upon selection of the Successful Proposer. The purpose of the Early Works Agreement is to <del>allow the permit Successful Proposer to commence certain early Design Work and general site preparation pending Financial Close. The Successful Proposer will be paid at pre-agreed hourly rates. Upon achievement of Financial Close, the Early Works Agreement will be null and void and the Successful Proposer will not be entitled to any compensation beyond what is contemplated</del> <u>design work and limited construction work prior to achievement of financial close so as to enable it to meet the aggressive delivery deadlines set forth</u> in the Project Agreement. The Owner will pay up to a maximum of \$35 million for performance of the Early Works. Successful Proposer will invoice the Owner in arrears on a monthly basis for work performed under the Early Works Agreement. At financial close, the Early Works Agreement will terminate, work performed under the Early Works Agreement will be deemed work performed under the Contract Documents, and Successful Proposer will reimburse the Owner for amounts paid under the Early Works Agreement as part of the overall financing of the transaction. The Early Works Agreement may be terminated by the Owner for convenience or for any Proposer Default that is not cured within the applicable cure period, <u>or by Developer for an Owner Default.</u></p> <p><b><i>Note: The Early Works Agreement allows the Developer to meet the aggressive schedule for Project delivery by allowing design work to commence upon selection of the successful proposer. Once the Project Agreement is executed, the cost of the Early Works gets incorporated into the Project price and therefore University does not pay any additional amount for the Early Works. All work completed under the Early Works Agreement is the property of the University, regardless of whether the parties execute the Project Agreement and proceed with the Project.</i></b></p>
<u>Appendix 25</u>	<u>Governmental Approvals and Deadlines</u>	<p><u>This Appendix sets forth the applicable periods of time for securing Governmental Approvals (commencing from the date on which Developer submits a complete application and supporting documents to the applicable Governmental Entity in accordance with the requirements of such Governmental Entity and the Contract Documents), after which Developer will be entitled to seek relief for Governmental Approval Delays.</u></p>

Appendix No.	Subject	Description
<a href="#"><u>Appendix 26</u></a>	<a href="#"><u>Baseline Geotechnical Report</u></a>	
		<a href="#"><u>Kleinfelder's geotechnical report dated January 8, 2016 is attached as Appendix 26 for purposes of baselining geotechnical conditions.</u></a>
<a href="#"><u>Appendix 27</u></a>	<a href="#"><u>Owner's Competitive Bidding Policies and Procedures</u></a>	
		<a href="#"><u>This Appendix sets forth the Owner's Competitive Bidding Policies and Procedures.</u></a>