

**SITE LEASE**

This Site lease ("**Site Lease**") dated June 26, 2019 ("**Effective Date**"), is made and entered into by and between the **Milpitas Unified School District**, as lessor ("**District**"), and **XL Construction**, as lessee ("**Contractor**") (together, the "**Parties**").

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

	<b>Address</b>
Randall Elementary School	1300 Edsel Drive, Milpitas, CA 95035

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference ("**School Site(s) or Site(s)**"); and

**WHEREAS**, the District desires to provide for the construction of a multipurpose room, administration building, classrooms, main drop off pickup lanes and parking spaces ("**Project(s)**"); and

**WHEREAS**, the District determines that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit B** ("**Project Site(s)**") attached hereto and incorporated herein by this reference; and

**WHEREAS**, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Contractor agrees to lease the Project Site(s) back to the District and perform the work of the Project ("**Facilities Lease**"), which Facilities Lease is incorporated herein by this reference; and

**WHEREAS**, the Board of Education of the District ("**Board**") has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by immediately entering into the Facilities Lease under which District will lease back the Project from Contractor; and

**WHEREAS**, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code section 17406 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

**WHEREAS**, the District is authorized under Education Code section 17406 to lease the Project Site(s) to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site(s) back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

**WHEREAS**, Contractor as lessee is authorized and competent to lease the Project Site(s) from District and to develop and cause the construction of the Project on the Project Site(s), and has duly authorized the execution and delivery of this Site Lease; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease;

## FACILITIES LEASE

This Facilities lease (“**Facilities Lease**”), dated June 26, 2019 (“**Effective Date**”), is made and entered into by and between **XL Construction** (“**Contractor**”), as sublessor, and **Milpitas Unified School District**, as sublessee (“**District**”) (together, the “**Parties**”).

### RECITALS

**WHEREAS**, the District currently owns a parcel or parcels of land located at:

School Site(s) or Site(s)	Address
Randall Elementary	1300 Edsel Drive, Milpitas, CA 95035

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**School Site(s) or Site(s)**”); and

**WHEREAS**, the District desires to provide for the construction of a multipurpose room, administration building, classrooms, main drop off pickup lanes and parking spaces (“**Project(s)**”); and

**WHEREAS**, the District has determined that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit B** (“**Project Site(s)**”) attached hereto and incorporated herein by reference; and

**WHEREAS**, District has retained the following architects (individually and collectively referred to as “**Architect**”) to prepare plans and specifications (“**Plans and Specifications**”) and as the architects/engineers of record for the Project as follows:

- HMC Architects

**WHEREAS**, District and Contractor have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Project Site(s) to the Contractor (“**Site Lease**”); and

**WHEREAS**, Contractor represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

**WHEREAS**, the District is authorized under Section 17406 of the Education Code of the State of California to lease the Project Site(s) to Contractor and to have Contractor develop and construct the Project on the Project Site(s) and to lease back to the District the Project Site(s) and the Project, and has duly authorized the execution and delivery of this Facilities Lease; and

**WHEREAS**, Contractor is authorized to lease the Project Site(s) as lessee and to develop the Project and to have the Project constructed on the Project Site(s) and to lease the Project and the Project Site(s) back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

**WHEREAS**, the Board of Education of the District (the “**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site(s) and the Project from Contractor and if necessary, make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference; and

**WHEREAS**, the Parties have performed all acts, conditions and things required by law to exist, to have happened

**EXHIBIT C  
TO  
FACILITIES LEASE**

**GUARANTEED PROJECT COST AND  
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

**1. Preliminary Services Payments**

**1.1.** For Preliminary Services for the District for the Project(s), the District shall pay to Contractor an amount not to exceed **Two Hundred Twenty-Four Thousand Five Hundred Thirty-Two (\$224,532)** ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Exhibit H** to the Facilities Lease and here.

1.1.1. The scope of Preliminary Services shall include the following:

- 1.1.1.1. Constructability reviews
- 1.1.1.2. Estimates at each design phase
- 1.1.1.3. Upfront site investigative work
- 1.1.1.4. Active management of HMC Architects
- 1.1.1.5. Value engineering solutions

**1.2.** The Preliminary Services Payments include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

**1.3.** Each Preliminary Services Payment shall be paid within forth-five (45) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

**2. Site Lease Payments.** As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease.

**3. Guaranteed Maximum Price (or Guaranteed Project Cost).** **[TO BE DETERMINED]** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for                     Dollars (\$                    ) ("**Guaranteed Project Cost**" or "**GPC**" or "**Guaranteed Maximum Price**" or "**GMP**"). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus Interest as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

**3.1. Cost to Perform Work.**

3.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

3.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

**3.2. General Conditions.** The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

**3.3. Fees.** All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

**3.4. Bonds and Insurance.**

**3.5. Overhead and Profit.**

**3.6. Contingency.** [OPTIONAL. TERMS AND AMOUNT TO BE NEGOTIATED.] A Contingency of [REDACTED] Dollars (\$ [REDACTED]) is included in the Guaranteed Project Cost and may be used in the District's sole discretion. If the District chooses to utilize all or a portion of the Contingency, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Facilities Lease. The unused portion of the Contingency shall be retained by the District at the end of the Project.

**3.7. Allowances.** [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.] [TO BE DETERMINED]

**4. Payment of Guaranteed Project Cost.** District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

**4.1. Tenant Improvement Payments.** [TO BE DETERMINED] Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor [REDACTED] Dollars (\$ [REDACTED]) ("Tenant Improvement Payment(s)"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor's Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

**4.2. Lease Payments Plus Interest.** [TO BE DETERMINED] Thirty (30) days after the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor [REDACTED] Dollars (\$ [REDACTED]) ("Lease Payment(s)") plus interest, as indicated below.

4.2.1. Contractor shall submit to the District a written invoice for each Lease Payment separately, at least thirty (30) days prior to the "Date of Payment" as indicated below for that Lease Payment.

4.2.2. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the School Site(s) and shall be made in equal monthly installments for the duration of the Term.

4.2.3. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes

or obligations on the public that did not exist prior to the execution of the Facilities Lease.

4.2.4. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.2.5. **Each Payment Constitutes a Current Expense of the District.**

4.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.2.5.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.2.5.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

4.2.5.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease.

4.2.6. **Timing of Lease Payments.** The first Lease Payment is due only after the following conditions have been completed and satisfied:

4.2.6.1. The Final Tenant Improvement Payment has been paid;

4.2.6.2. All applicable retention has been paid pursuant to the terms of the Contract Documents;

4.2.6.3. The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and

4.2.6.4. The Contractor has provided a duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from all subcontractors of any

tier and suppliers that each has been paid all amounts owing to it from the Contractor for all work on the Project.

4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at        percent. **[TO BE DETERMINED]**

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after all of the above conditions have been completed and satisfied.	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
<b>Total</b>	<b>\$Numeric Sum</b>	<b>\$__</b>	<b>\$__</b>

4.2.8. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

**5. Changes to Guaranteed Project Cost.**

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is

performed or deducted from the next payment request from the Contractor, as applicable.

**5.2.** The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

**5.3. Cost Savings.** Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

**5.4. Insurance and Bond Reimbursements.** At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

**EXHIBIT H  
TO FACILITIES LEASE**

**TERMS AND CONDITIONS FOR PRELIMINARY SERVICES**

- 1. Scope of Contractor's Preliminary Services.** Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):

**1.1. General Services.**

- 1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
- 1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.
- 1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.
- 1.1.4. Contractor shall prepare and update the preliminary Project schedule.
- 1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
- 1.1.6. Contractor shall assist District with City land use issues;
- 1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;
- 1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;
- 1.1.9. Contractor shall provide review and comment upon survey of the Project site;
- 1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.

**1.2. Review of Design Documents.**

- 1.2.1. Contractor shall review Project design and budget with the District and the Architect during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents

Phase, and at 100% Construction Documents Phase to:

- 1.2.1.1. Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;
- 1.2.1.2. Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;
- 1.2.1.3. Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and
- 1.2.1.4. Contractor shall provide plan review.
- 1.2.1.5. **Value-engineering.** Contractor shall prepare a value-engineering report for District review and approval that:
  - 1.2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);
  - 1.2.1.5.2. Provides detailed estimate for proposed value-engineering items;
  - 1.2.1.5.3. Defines methodology or approaches that maximize value; and
  - 1.2.1.5.4. Identifies design choices that can be more economically delivered.
- 1.2.1.6. **Constructability Review.** Contractor shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:
  - 1.2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;
  - 1.2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;
  - 1.2.1.6.3. Back-checks design drawings for inclusion of modifications;
  - 1.2.1.6.4. Provides the District with written confirmation that:
    - 1.2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and
    - 1.2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.
- 1.2.2. **Confirm Modifications to Design Drawings.** If the District accepts Contractor's comments, including the value-engineering and/or constructability review comments, Contractor shall review the design documents to confirm that those comments are properly incorporated into the final design documents.

### **1.3. Budget of Project Costs.**

- 1.3.1. At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent set of design documents. Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.
- 1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:
  - 1.3.2.1. Overhead and profit;
  - 1.3.2.2. Supervision;
  - 1.3.2.3. General conditions;
  - 1.3.2.4. Layout & Mobilization (not more than 1%)
  - 1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
  - 1.3.2.6. Bonds and insurance (not more than 2%);
  - 1.3.2.7. Close-out documentation (not less than 3%);
  - 1.3.2.8. Demolition;
  - 1.3.2.9. Installation;
  - 1.3.2.10. Rough-in;
  - 1.3.2.11. Finishes;
  - 1.3.2.12. Testing;
  - 1.3.2.13. Punchlist and acceptance.

Contractor shall indicate its willingness and ability to enter into the Lease Agreements to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Lease Agreements.

### **1.4. Construction Schedule and Phasing Plan.**

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

### **1.5. Construction Planning and Bidding.**

- 1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.
- 1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to

eliminating change order requests by the Architect or subcontractors.

1.5.3. Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.

1.5.4. Contractor shall prepare appropriate subcontractor bid packages.

2. **Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.
3. **District's Responsibilities.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.
4. **Termination**
  - 4.1. **Termination by Contractor.** The services described in this Exhibit may be terminated by Contractor upon fourteen (14) days written notice to District in the event of an uncured substantial failure of performance by District, unless the District has acted to commence cure efforts in any case where a reasonable cure cannot be concluded within the fourteen (14) day notice period.
  - 4.2. **Termination by District.** This Agreement may be terminated at any time without cause by District upon fourteen (14) days written notice to Contractor. In the event of such a termination by District, the District shall pay Contractor for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Contractor pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due Contractor for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process that would best serve the District if a completed product was presented.
  - 4.3. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement (the "Termination Material") which is not Contractor privileged information, as defined by law, or Contractor's personnel information.
5. **Compensation to Contractor**

District shall pay for the Contractor's performance of the preliminary services pursuant to the payment provisions indicated in **Exhibit C** to the Facilities Lease.
6. **Schedule of Preliminary Services**

The Contractor shall perform the Preliminary Services pursuant to the schedule indicated in **Exhibit F** to the Facilities Lease.