

**UTILIZATION REPORT**

**Prepared for the Department of Education  
by  
Foothill – De Anza Community College District  
for  
Parcel C of the former Onizuka Air Force Station, Sunnyvale, California**

**February 14, 2013 to February 14, 2014**



**FOOTHILL – DE ANZA EDUCATION CENTER**

**UTILIZATION REPORT #1**  
**Foothill – De Anza Community College District**  
**For**  
**Parcel C of the former Onizuka Air Force Station, Sunnyvale, California**

**INTRODUCTION**

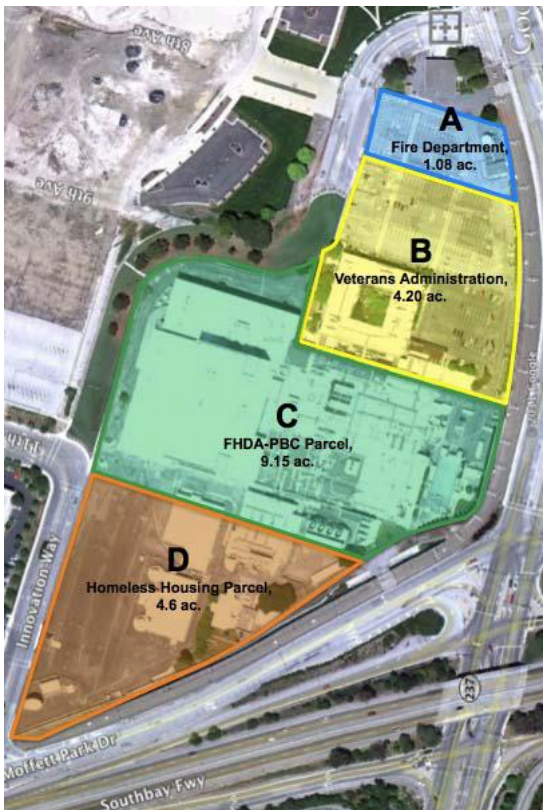
The Foothill – De Anza Community College District (“District”) is pleased to submit its first Utilization Report for the District’s portion of the former Onizuka Air Force Station referenced below. This report covers the one-year period from February 14, 2013 to the corresponding date in 2014.

**I. GRANTEE**

The Grantee is the Foothill – De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022

**II. PROPERTY IDENTIFICATION**

The property is described as Parcel C of the former Onizuka Air Force Station in Sunnyvale, California.



### **III. PROGRAM OF UTILIZATION**

The property is planned to accommodate relocation of the Middlefield Education Center, to offer support services and credit and non-credit programs in basic skills, transfer and workforce preparation as well as not-for-credit fee-based community education. In order to provide these services a new education center complex is planned; due to the need for new construction, no academic activities have yet taken place on the property since it was conveyed to the District.

Activities on the property in the past year have included surveying, soils investigations and other tasks related to preparation of design documents, and demolition of existing buildings and site improvements to clear the property for future construction.

### **IV. STATUS OF PROPERTY**

A number of Air Force buildings, amounting to approximately 550,000 square feet of floor area, were present on the property when it was conveyed to the District. The following buildings were located on the District's parcel (using the Air Force's numbering system): 1001\*; 1003; 10031\*; 10032; 1004\*; 1005\*; 1006; 1008\*; 1015\*; 1035\*; 1040\* and 1042\*. See attached Layout Plan for the location of these buildings on the former Onizuka Air Force Station site.

As stated in the District's Application for Public Benefit Allowance Acquisition of Surplus Federal Real Property for Educational Purposes, it was the District's intent to remove those obsolete buildings. The District did explore the possibility of re-using some buildings but concluded that reuse was not economically feasible, so demolition planning and design of new facilities was initiated shortly after the property was conveyed to the District. Buildings indicated with an asterisk (\*) in the list above have been demolished as of the date of this report, and the remaining buildings are undergoing demolition or are scheduled to be demolished in the near future. Where existing buildings were situated across property lines shared with adjoining parcels (buildings 1001, 1004, 1005 and 1042), the District has demolished those buildings in their entirety under agreements with the US Department of Veterans Affairs and the City of Sunnyvale, to whom parcels B and D, respectively, were conveyed.

A list of key schedule milestones are as follows:

Demolition:	August '13 to May '14
Building Design:	May '13 to May '14
Plan Check by Division of State Architect:	June '14 to September '14
Construction Procurement:	October '14 to November '14
Building Construction:	December '14 to April '16
Equipment Install/Startup & Test:	May '16 to August '16
Start Instruction Fall Quarter:	September '16

Contracts that have been issued for preparation of surveys, environmental documents and project design amount to over \$2,925,000, and design work is near 50% complete. The \$3,744,150 contract for site demolition is over 60% complete as of preparation of this report.

### **V. ENCUMBRANCES AND PROPERTY USE ARRANGEMENTS**

The new education center is being developed under a lease-leaseback arrangement allowed by the California Education Code 81335 by which the District leases the site to a contractor during construction activities, makes payment through a corresponding facilities lease, and terminates both leases upon completion of construction, taking title to all improvements. The District has entered into site and facilities leases for demolition and construction with C. W. Driver, a general contractor selected through a competitive public process. Copies of the leases are attached to this report.

No easements have been granted to date but planning is under way for the location of easements for Pacific Gas and Electric Company and City of Sunnyvale utility access. It is anticipated that the portion of the property that comprises one

half of the Innovation Way right-of-way will be dedicated to the City of Sunnyvale as a public thoroughfare at some time in the future.

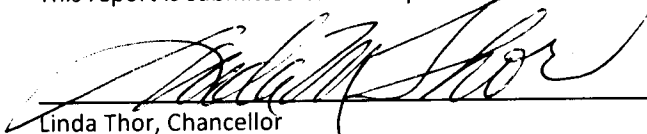
No liens or legal claims have been attached to the property to the knowledge of the District.

**VI. DISCRIMINATION**

I reaffirm our commitment to nondiscrimination as certified in the original public benefit conveyance application.

**SIGNATURE**

This report is submitted to the Department of Education on February 1, 2014.



---

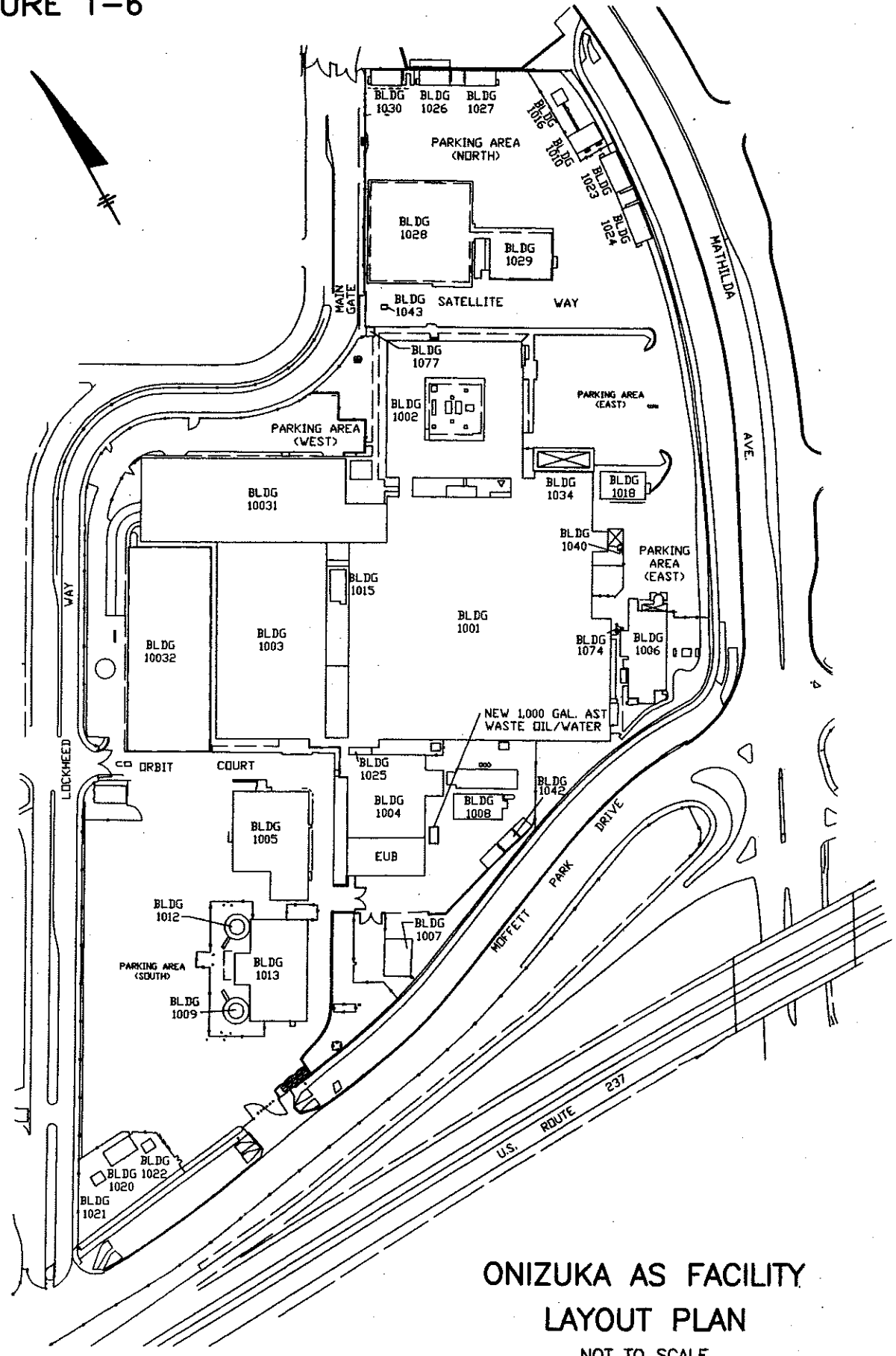
Linda Thor, Chancellor  
Foothill – De Anza Community College District

**Attachments:**

- Onizuka Facility Layout Plan (USAF Restoration Management Action Plan Figure 1-6)
- Facilities Lease for Demolition / Construction, dated July 1, 2013
- Site Lease for Demolition / Construction, dated July 1, 2013

FIGURE 1-6

J:\1549\019\ONIZUKA\019R003.DWG PSF=1.25



ONIZUKA AS FACILITY  
LAYOUT PLAN  
NOT TO SCALE

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Foothill De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, CA 94022  
Attention: Gina Bailey

This document is recorded for the  
benefit of the Foothill-De Anza  
Community College District, and  
recording is fee exempt under Section  
6103 of the Government Code.

---

**FACILITIES LEASE**

FOOTHILL-DE ANZA EDUCATION CENTER

Sunnyvale, California

by and between

**C. W. DRIVER**  
as Sublessor

and

**FOOTHILL-DEANZA COMMUNITY COLLEGE DISTRICT**  
as Sublessee

Dated as of \_\_\_\_\_, 2013

## **FACILITIES LEASE**

**THIS FACILITIES LEASE** (“Facilities Lease”), dated as of \_\_\_\_\_, 2013 (“Effective Date”), is made and entered into by and between C.W. DRIVER, a corporation duly organized and existing under the General Corporation Law of the State of California, as sublessor (the “Contractor”), and FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT, a California community college district duly organized and validly existing under the Constitution and laws of said State of California, as sublessee (the “District”).

### **RECITALS**

WHEREAS, the District desires to provide for site demolition, site work and the construction of a new education center as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Project”);

WHEREAS, on the date hereof, the District has leased to the Contractor the real property for the construction of the Project described on Exhibit “B” attached hereto (the “Site”) pursuant to the terms of a Site Lease dated as of the date hereof by and between the District and the Contractor;

WHEREAS, the District is authorized under Section 81335 of the Education Code of the State of California to lease the Site to the Contractor and to have the Contractor construct the Project on the Site and to lease to the District the Site and the Project, and to accomplish that purpose has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Contractor is authorized to sublease the Site as lessee and is obligated to construct the Project on the Site, and has duly authorized the execution and delivery of this Facilities Lease;

WHEREAS, the Governing Board 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 Site to the Contractor and by immediately entering into this Facilities Lease under which the District will sublease the Site and lease the Project from the Contractor and make Lease Payments on the dates and in the amounts set forth in the payment schedule attached hereto as Exhibit “C” (the “Lease Payment Schedule”).

WHEREAS, the District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Facilities Lease 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 Facilities Lease;

**NOW, THEREFORE**, in consideration of the above premises and of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND EXHIBITS**

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

“Construction Provisions” means the terms and conditions for construction of the Project as set forth in Exhibit “D3”, as modified by Exhibit “D1” and Exhibit “D2”.

“Contractor” means C. W. DRIVER, a corporation organized and existing under the General Corporation Law of the State of California, and its successors and assigns.

“Contractor Representative” means the Chief Executive Officer of the Contractor, or any person authorized to act on behalf of the Contractor under or with respect to this Facilities Lease as evidenced by a resolution conferring such authorization adopted by the Board of Directors of the Contractor or as so designated by the President of the Contractor.

“District” means the FOOTHILL - DE ANZA COMMUNITY COLLEGE DISTRICT, a California community college district duly organized and validly existing under the Constitution and laws of said State of California.

“District Representative” means the spokesperson or agent of the District, or any other person authorized by the Governing Board of the District to act on behalf of the District under or with respect to this Facilities Lease.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Facilities Lease.



“Facilities Lease” means this Facilities Lease together with any duly authorized and executed amendment hereto.

“Lease Payment” means any payment required to be made by the District pursuant to Section 4.5 of this Facilities Lease and as set forth in Exhibit “C” attached to this Facilities Lease.

“Lease Payment Schedule” shall mean the payment schedule attached hereto as Exhibit “C”.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Section 5.1 hereof, permit to remain unpaid; (ii) the Site Lease; (iii) this Facilities Lease; (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease and which will not materially impair the use of the Site; and (v) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which the Contractor and the District consent in writing which will not impair or impede the operation of the Site.

“Project” means the improvements and equipment to be constructed and installed by the Contractor as more particularly described in Exhibit “A” attached hereto, and includes, unless the context requires otherwise, the Site.

“Site” means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit “B” attached hereto.

“Site Lease” means the Site Lease dated as of \_\_\_\_\_, 2013, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.

“Term of this Facilities Lease” or “Term” means the time during which this Facilities Lease is in effect, as provided for in Section 4.2 of this Facilities Lease.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

Exhibit A - DESCRIPTION OF PROJECT: The description of the Project.

Exhibit B - DESCRIPTION OF SITE: The descriptions of the real property constituting the Site.

Exhibit C - SCHEDULE OF LEASE PAYMENTS: The schedule of Lease Payments to be paid by the District hereunder.

Exhibit D1 - SPECIAL PROVISIONS: Modifications to the Construction Provisions specific to the Project Phase.

Exhibit D2 - SUPPLEMENTAL PROVISIONS: The terms and conditions specific to the District's Project Stabilization Agreement.

Exhibit D3 - CONSTRUCTION PROVISIONS: The terms and conditions for the construction of the Project, including Supplementary Provisions

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to the Contractor as follows:

(a) Due Organization and Existence. The District is a community college district, duly organized and existing under the Constitution and laws of the State of California.

(b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

(c) No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

Section 2.2. Representations, Covenants and Warranties of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Contractor is a corporation duly organized and existing under the General Corporation Law of the State of California, has power to enter into this Facilities Lease and the Site Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) No Encumbrances. The Contractor will not pledge the Lease Payments or other amounts derived from the Site and from its other rights under this Facilities Lease, and will not mortgage or encumber the Site, except as provided under the terms of this Facilities Lease.

(c) No Violations. Neither the execution and delivery of this Facilities Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

(d) No Assignments. Except upon written consent of the District, the Contractor will not assign this Facilities Lease, its right to receive Lease Payments and prepayments from the District, or its duties and obligations hereunder to any other person, firm or Contractor so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

(e) Authorization. The Contractor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

### **ARTICLE III**

#### **CONSTRUCTION OF PROJECT**

Section 3.1. The Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as Exhibit "D3", as modified by Exhibit "D1" and Exhibit "D2". The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project as provided in the Construction Provisions. The Contractor will cooperate at all times with the District in bringing about the timely

completion of the Project. The definition and description of the Project contained herein may be amended by the District from time to time.

## ARTICLE IV

### AGREEMENT TO LEASE; TERMINATION OF LEASE; LEASE PAYMENTS; TITLE TO THE SITE

Section 4.1. Lease of Property; No Merger. The Contractor hereby leases the Project and the Site to the District, and the District hereby leases said Project and Site from the Contractor upon the terms and conditions set forth in this Facilities Lease. The leasing by the Contractor to the District of the Site shall not effect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease, and the Contractor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease. As to the Site, this Facilities Lease shall be deemed and constitute a sublease. Leasing the Project to the District shall not relieve the Contractor of its obligations under Article III.

Section 4.2. Term of Facilities Lease. The Term of this Facilities Lease shall commence as of \_\_\_\_\_2013 and shall terminate on the completion of the Project and payment of the last Lease Payment, as provided in the Lease Payment Schedule.

Section 4.3. Termination of Term. The Term of this Facilities Lease shall terminate upon the earliest of any of the following events:

(a) An Event of Default and the Contractor's election to terminate this Facilities Lease pursuant to Section 9.2 hereof; or

(b) The arrival of the last day of the Term of this Facilities Lease and payment of all Lease Payments hereunder.

Section 4.4. Possession. The District may take possession of the Project hereunder as it is completed.

Section 4.5. Lease Payments.

(a) Obligation to Pay. Subject to the provisions of Articles III, VI and X hereof, the District agrees to pay to the Contractor, its successors and assigns, as rental for the use and occupancy of the Project and the Site, the Lease Payments in the amounts specified in the Lease Payment Schedule. Pursuant to the Lease Payment Schedule, Lease Payments shall be made for the Site and portions of the Project as construction of

the Project is completed. All Lease Payments will be subject to the Final Guaranteed Maximum Price set forth in the Construction Provisions.

(b) Lease Payments to Constitute Current Expense of the District. The District and the Contractor understand and intend that the obligation of the District to pay Lease Payments 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. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder. It is the intent of the parties that Lease Payments by the District shall not be considered tax exempt or tax free interest payments.

(c) Appropriation. The District has appropriated the Guaranteed Maximum Price from the District's current fiscal year and/or State funds to be received during the District's current fiscal year, and has segregated such funds in a separate account to be utilized solely for Lease Payments.

Section 4.6. Quiet Enjoyment. Excepting any interference resulting from the Contractor's performance pursuant to the Construction Provisions, during the term of this Facilities Lease, the Contractor shall provide the District with quiet use and enjoyment of the Site, and the District shall during such Term peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from the Contractor, except as expressly set forth in this Facilities Lease. The Contractor will, at the request of the District join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Contractor may lawfully do so. Notwithstanding the foregoing, the Contractor shall have the right to inspect the Site as provided in Section 7.2 hereof.

Section 4.7. Title. During the Term of this Facilities Lease, the District shall hold title to the Site and obtain title to the Project from the Contractor, and any and all additions which comprise futures, repairs, replacements or modifications thereof, as construction progresses and lease payments are made to the Contractor. During the term of this Facilities Lease, the Contractor shall have a leasehold interest in the Site pursuant to the Site Lease.

If the District prepays the Lease Payments in full pursuant to Article X hereof or makes an advance deposit pursuant to Section 10.1 hereof, or pays all Lease Payments, all remaining right, title and interest of the Contractor, if any, in and to the Project and the Site, shall be fully transferred to and vested in the District. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer. However, upon such prepayment if then deemed necessary by the District, the Contractor shall be required to execute an instrument conveying to the District any interest created by the Site Lease.

Section 4.8. Abatement of Rental in the Event of Substantial Interference With Use and Occupancy of the Project and the Site. The amount of Lease Payments for the Project and the Site shall be abated during any period in which by reason of delay in the completing of the Project beyond the final completion date specified in the Construction Provisions, there is substantial interference with the use and occupancy of the Project and the Site by the District. The amount of such abatement shall be agreed upon by the District and the Contractor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the

Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

Section 4.9. Fair Rental Value. The Lease Payments and any prepayment thereof coming due and payable constitute the total rental for the Project and shall be paid by the District as set forth in Exhibit "D3" hereto for and in consideration of the right to use and occupy, and the continued quiet use and enjoyment of, the Project during each month. The District and the Contractor have agreed and determined that the total Lease Payments and any prepayment thereof do not exceed 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.

## **ARTICLE V**

### **MAINTENANCE; TAXES; AND OTHER MATTERS**

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Except as provided for in the Construction Provisions, the repair and maintenance of the Project and the Site shall be the responsibility of the District.

If applicable, the District shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Contractor or District which affect the Project and the Site.

## ARTICLE VI

### EMINENT DOMAIN

#### Section 6.1. Eminent Domain.

(a) Eminent Domain Takings. If all of the Project and the Site shall be taken permanently under the power of eminent domain, the term of this Facilities Lease shall cease as of the day possession shall be so taken. If less than all of the Project and the Site shall be taken permanently, or if all of the Project and the Site or any part thereof shall be taken temporarily, under the power of eminent domain:

(1) this Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and

(2) there shall be a partial abatement of Lease Payments as a result of the application of the net proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder.

(b) From Eminent Domain Award. The net proceeds of any eminent domain or condemnation shall be payable to the District.

## ARTICLE VII

### ACCESS

Section 7.1. The Contractor shall have the right at all reasonable times to enter upon the Site to construct the Project pursuant to the Construction Provisions. The District shall have the right at all reasonable times to enter upon the Site for whatever purpose the District chooses.

## ARTICLE VIII

### ASSIGNMENT, SUBLEASING; AMENDMENT

Section 8.1. Assignment and Subleasing. This Facilities Lease may be assigned by the District subject to the terms hereof, but may not be assigned by the Contractor without the written consent of the District. Any sublease by the District shall be subject to all of the following conditions:

- (a) This Facilities Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District; and
- (b) The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Contractor a true and complete copy of such sublease; and
- (c) No such sublease by the District shall cause the Project or the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California.

Section 8.2. Amendment of this Facilities Lease. Without the written consent of the Contractor, the District will not alter, modify or cancel, or agree or consent to alter, modify or cancel this Facilities Lease.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The following shall be “Events of Default” under this Facilities Lease and the terms “Event of Default” and “Default” shall mean, whenever they are used in this Facilities Lease, any one or more of the following events:

- (a) Failure by the District to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the District to observe and perform any covenant, condition or agreement in this Facilities Lease on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Contractor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Contractor shall not unreasonably withhold their consent to an extension of such time if corrective action is



instituted by the District within the applicable period and diligently pursued until the default is corrected.

(c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Contractor to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition hereof and upon the breach thereof, the Contractor may exercise any and all rights of entry and re-entry upon the Project and the Site, and also, at its option, with or without such entry, may terminate this Facilities Lease; provided, however, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Contractor, the District shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Facilities Lease and the performance of all conditions herein contained and in any event such rent and/or damages shall be payable to the Contractor at the time and in the manner as herein provided, to wit:

(a) In the event the Contractor does not elect to terminate this Facilities Lease in the manner herein provided for in subparagraph (b) hereof, the District agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Contractor for any deficiency arising out of the re-letting of the Project and the Site, or, in the event the Contractor is unable to re-let the Project and the Site, then for the full amount of all Lease Payments to the end of the Term of this Facilities Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinbefore provided for the payment of Lease Payments hereunder, notwithstanding such entry or reentry by the Contractor or any suit in unlawful detainer, or otherwise, brought by the Contractor for the purpose of effecting such re-entry or obtaining possession of the Project and the Site or the exercise of any other remedy by the Contractor. The District hereby waives any and all claims for damages caused or which may be caused by the Contractor in re-entering and taking possession of the Project and the Site as herein provided, all claims for damages that may result from the destruction of or injury to the

Project and the Site, and all claims for damages to or loss of any property belonging to the District that may be in or upon the Project and the Site. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of the Contractor to re-rent the Project and the Site in the event of such re-entry without effecting a surrender of this Facilities Lease, and further agrees that no acts of the Contractor in effecting such re-renting or re-leasing shall constitute a surrender or termination of this Facilities Lease irrespective of the term for which such re-leasing or re-renting is made or the terms and conditions of such re-leasing or re-renting or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Facilities Lease shall vest in the Contractor to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof.

(b) In an event of default by the District hereunder, the Contractor at its option may terminate this Facilities Lease and re-rent or re-lease all or any portion of the Project and the Site. In the event of the termination of this Facilities Lease by the Contractor at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project and the Site by the Contractor in any manner whatsoever or the re-renting or re-leasing of the Project and the Site), the District nevertheless agrees to pay to the Contractor all costs, losses or damages howsoever arising or occurring, payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. The Net Proceeds relating to the re-renting of the Site and the Project shall be used in the manner set forth in Section 9.6 hereof. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Contractor shall of itself operate to terminate this Facilities Lease, and no termination of this Facilities Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Contractor shall have given written notice to the District of the election on the part of the Contractor to terminate this Facilities Lease. The District covenants and agrees that no surrender of the Site for the remainder of the Term hereof or any termination of this Facilities Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Contractor by such written notice.

(c) Notwithstanding any other provision herein, to the extent this Lease provides any right or remedy to Contractor which contradicts or is inconsistent with the Construction Provisions, the latter shall control over the former.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the

Contractor to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

Section 9.4. Attorneys' Fees and Expenses. In the event either party to this Facilities Lease should default under any of the provisions hereof, each party shall bear the cost of its own attorney's fees and expenses.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.6. Application of Proceeds. All net proceeds received from the re-rent, re-lease or other disposition of the Project and the Site under this Article IX, and all other amounts derived by the Contractor as a result of an Event of Default hereunder, shall be applied to the Lease Payments in order of payment date and, in the case of the Net Proceeds received from the re-renting or re-leasing of the Project and the

Site pursuant to Section 9.2(b), shall be applied to the prepayment of the Lease Payments in accordance with Section 10.2 hereof.

## **ARTICLE X**

### **PREPAYMENT OF LEASE PAYMENTS**

Section 10.1. Security Deposit. Notwithstanding any other provision of this Facilities Lease, the District may, so long as the District is not in default hereunder, on any date secure the payment of Lease Payments by a deposit with the Contractor of cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment Schedule set forth in Exhibit "C" hereto. In the event of a deposit pursuant to this Section, all obligations of the District under this Facilities Lease and all security provided by this Facilities Lease for said obligations shall cease and terminate, excepting only the obligation of the District to make, or cause to be made, Lease Payments from the deposit made by the District pursuant to this Section.

Section 10.2. Optional Prepayment. The District may prepay the Lease Payments, in whole or in part, at any time. The District shall give the Contractor written notice of its intention to exercise its option and the date and amount of such prepayment no less than fifteen (15) days in advance of the date of exercise.

**ARTICLE XI**

**MISCELLANEOUS**

Section 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Contractor: C.W. Driver  
468 N. Rosemead Boulevard  
Pasadena, California 91107  
Attn: Dana Roberts, President

If to District: Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022  
Attn: Gina Bailey, District Purchasing Services

**WITH A COPY TO:**

Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022  
Attn: Charles Allen, District Facilities Department

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2. Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

Section 11.3. Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.4. Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Lease Payments shall be an absolute net return to the Contractor, free and clear of any expenses, charges or setoffs whatsoever.

Section 11.5. Further Assurances and Corrective Instruments. The Contractor and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease.

Section 11.6. Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 11.7. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 11.8. Contractor and District Representatives. Whenever under the provisions of this Facilities Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 11.9. Captions. The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Facilities Lease, nor the construction or interpretation of any part thereof.

Section 11.10 Prior Agreements. This Facilities Lease and the corresponding Site Lease and the exhibits incorporated into them collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Facilities Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 11.11 Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorney's fees.

IN WITNESS WHEREOF, the parties hereto have caused this Facilities Lease to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

**“DISTRICT”**  
**FOOTHILL-DE ANZA COMMUNITY**  
**COLLEGE DISTRICT**

**“CONTRACTOR”**  
**C. W. DRIVER**

By: \_\_\_\_\_  
Gina Bailey  
Interim Director, Purchasing Services

By \_\_\_\_\_  
Dana Roberts  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT "A"**

### **DESCRIPTION OF PROJECT**

#### **General Description**

Generally, the Foothill – De Anza Education Center project consists of construction of a building of approximately 51,000 gross square feet, with related site improvements and parking, on a parcel of approximately 9.15 acres. Demolition of existing site improvements will take place prior to construction activities, and demolition activities will include removal of some existing structures on adjacent parcels owned by the City of Sunnyvale (City) and the Veterans Administration (VA).

The Work of the Project will proceed in three Project Phases: a Demolition Phase, an Early Site Work Phase, and a Building and Site Construction Phase. The Project Site for each phase is described in Exhibit "B."

The Work to be performed in each Project Phase for the Guaranteed Maximum Price stated in Exhibit "C" is fully described in Drawings, Specifications and Addenda issued by the Architect to the Contractor and in documents issued by the Contractor to subcontract bidders. A list of those documents is attached to this Exhibit "A".

The listed documents may describe Bid Alternates. All Bid Alternates accepted by the District and included in the Guaranteed Maximum Price are listed in the Qualifications and Clarifications attachment to this Exhibit "A".

#### **Demolition Phase Description**

This Exhibit "A" describes the Demolition Phase of the Project.

The work to be completed on the District's parcel (Parcel C) in the Demolition Phase generally includes removal of existing buildings, including foundations; removal of other site improvements above and below grade; removal of paving and most landscaping; removal or modification of site utilities; removal of primary electrical power source and replacement with temporary power as needed. Site improvements to remain include perimeter fences; Innovation Way paving, sidewalk and median; and utilities to be reused.

The work to be completed on the Veteran Administration's parcels (Parcels A & B) generally includes removal of the portion of jointly-owned Building 1001 that is on Parcel B, including foundations; and removal of building 1034, not including removal of its foundation. Building 1002 will remain for future use by the VA. Site improvements to remain include all improvements outside the immediate work area of building demolition noted above.

The work to be completed on the City's parcels (Parcels D & E) generally includes removal of the portions of jointly-owned Buildings 1004, 1005 and 1042 that are on Parcel D, including foundations; and removal of four small buildings on Lot D, not including foundation removal; and removal of miscellaneous structures on Parcel D. Site improvements to remain include all improvements outside the immediate work area of building demolition noted above. Buildings on Parcel E will remain for future action by the City.

## **Documents Describing the Project**

The following attachments list the documents describing the project in detail. The listed documents are incorporated into this Exhibit “A” by reference.

### Demolition Phase Documents:

- Project Document Listing, dated 14 June, 2013
- Qualifications and Clarifications, dated 17 June, 2013
- Project Schedule (Demolition Phase only), dated 14-Jun-13

END OF EXHIBIT “A”



PROJECT DOCUMENT LISTING

FOOTHILL-DEANZA EDUCATIONAL CENTER  
14 JUNE 2013 | VERSION 1.1

**THE LISTING BELOW COMPRISES ALL OF THE DOCUMENTS INCLUDED UNDER THIS CONTRACT. UNLESS OTHERWISE NOTED, ALL DOCUMENTS ARE PREPARED BY LIONAKIS.**

NO.	SHEET	DESCRIPTION	ORIGINAL ISSUE	LATEST REV. DATE
1	G-001	COVER SHEET	4/5/2013	4/5/2013
2	G-002	SITE DEMOLITION KEY PLAN	4/5/2013	4/5/2013
3	C-1	NOTES AND LEGEND	4/3/2013	4/3/2013
4	C-2	EXISTING CONDITIONS	4/3/2013	4/3/2013
5	C-3	DEMOLITION PLAN	4/3/2013	4/3/2013
6	C-4	ALTERNATIVE NO. 1 DEMOLITION PLAN	4/3/2013	4/3/2013
7	C-5	GRADING AND DRAINAGE PLAN	4/3/2013	4/3/2013
8	C-6	EROSION CONTROL PLAN	4/3/2013	4/3/2013
9	C-7	EROSION CONTROL DETAILS	4/3/2013	4/3/2013
10	C-8	BLUEPRINT FOR A CLEAN BAY	4/3/2013	4/3/2013
11	AD-101	OVERALL DEMOLITION SITE PLAN	4/5/2013	4/5/2013
12	AD-102	PARTIAL DEMOLITION SITE PLAN	4/5/2013	4/5/2013
13	AD-103	PARTIAL DEMOLITION SITE PLAN	4/5/2013	4/5/2013
14	AD-111	BUILDING 10031 DEMOLITION FLOOR PLANS	4/5/2013	4/5/2013
15	AD-112	BUILDING 10032 DEMOLITION FLOOR PLANS	4/5/2013	4/5/2013
16	AD-113A	BUILDING 1003 DEMOLITION FLOOR PLANS	4/5/2013	4/5/2013
17	AD-113B	BUILDING 1003 DEMOLITION FLOOR PLANS	4/5/2013	4/5/2013
18	AD-113C	BUILDING 1003 DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
19	AD-114	BUILDING 1001 DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
20	AD-115	BUILDING 1034, 1018 & 1006 DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
21	AD-116	BUILDING 1004, 1008 & 1035 DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
22	AD-117	BUILDING 1005 DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
23	A-511	DETAILS	4/5/2013	4/5/2013
24	E0.0	GENERAL INFORMATION	12/10/2013	12/10/2013
25	E1.0	SITE PLAN DEMOLITION	12/10/2013	12/10/2013
26	5401	EXISTING ELECTRICAL SINGLE LINE DIAGRAM	4/5/2013	11/4/1998
27	R-01	TOPOGRAPHY AND SURVEY DATA	4/5/2013	4/5/2013
28	R-02	BASE UTILITY MAP AND BASE LAYOUT PLAN	4/5/2013	4/5/2013
29	R-03	PAVEMENT MARKINGS	4/5/2013	4/5/2013
30	R-04	WATER SUPPLY SYSTEM	4/5/2013	4/5/2013
31	R-05	SPRINKLER AND IRRIGATION SYSTEM	4/5/2013	4/5/2013
32	R-06	ENTRY WAY LANDSCAPE	4/5/2013	4/5/2013
33	R-07	SANITARY SEWER SYSTEM	4/5/2013	4/5/2013
34	R-08	STORM DRAINAGE SYSTEM	4/5/2013	4/5/2013
35	R-09	COMMERCIAL POWER SUPPLY	4/5/2013	4/5/2013

NO.	SHEET	DESCRIPTION	ORIGINAL ISSUE	LATEST REV. DATE
36	R-10	ELECTRICAL DISTRIBUTION SYSTEM	4/5/2013	4/5/2013
37	R-11	POWER PLANT AND FEEDER DATA	4/5/2013	4/5/2013
38	R-12	HEATING AND COOLING SYSTEM	4/5/2013	4/5/2013
39	R-13	NATURAL GAS DISTRIBUTION SYSTEM	4/5/2013	4/5/2013
40	R-14	STREET LIGHTING SYSTEM	4/5/2013	4/5/2013
41	R-15	LIQUID FUEL SYSTEM	4/5/2013	4/5/2013
42	R-16	CATHODIC PROTECTION SYSTEM	4/5/2013	4/5/2013
43	R-17	COMPOSITE UTILITY SYSTEMS	4/5/2013	4/5/2013
44	R-18	EXISTING FACILITIES BY CONSTRUCTION TYPE	4/5/2013	4/5/2013
45	HD-111A	BUILDING 1001 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
46	HD-112A	BUILDING 1001 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
47	HD-113A	BUILDING 1001 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
48	HD-114A	BUILDING 1001 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
49	HD-115A	BUILDING 1001 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
50	HD-111B	BUILDING 1002-500 & 1040 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
51	HD-111C	BUILDING 1003 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
52	HD-112C	BUILDING 1003 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
53	HD-113C	BUILDING 1003 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
54	HD-114C	BUILDING 1003 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
55	HD-115C	BUILDING 1003 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
56	HD-111D	BUILDING 1004 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
57	HD-112D	BUILDING 1004 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
58	HD-113D	BUILDING 1004 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
59	HD-111E	BUILDING 1005 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
60	HD-111F	BUILDING 1006, 1018 & 1074 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
61	HD-111G	BUILDING 1007 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
62	HD-111H	BUILDING 1008, 1042 & COOLING TOWER HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
63	HD-111I	BUILDING 1009, 1012 & 1013 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
64	HD-111J	BUILDING 1015 & 1025 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
65	HD-111K	BUILDING 1020, 1021 & 1022 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
66	HD-111L	BUILDING 1035 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
67	HD-111M	BUILDING 10031 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
68	HD-112M	BUILDING 10031 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
69	HD-111N	BUILDING 10032 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
70	HD-112N	BUILDING 10032 HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013
71	HD-111O	SITE HAZMAT DEMOLITION FLOOR PLAN	4/5/2013	4/5/2013

**SPECIFICATION MANUAL**

Project Specification Manual prepared by Lionakis dated January 22, 2013 entitled "Demolition Documents"; inclusive of Division 01 through Division 03 for Foothill-DeAnza Educational Center Demolition and Site Investigation.

<b>DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS</b>	
00 43 36	SUMMARY
00 45 25	WORK RESTRICTIONS
00 61 13.13	ALLOWANCES
00 61 13.16	SUBSTITUTION PROCEDURES
<b>DIVISION 01 – GENERAL REQUIREMENTS</b>	
01 26 00	CONTRACT MODIFICATION PROCEEDURES
01 26 13	REQUEST FOR INFORMATION (RFI) PROCEEDURES
01 29 75	APLICATIONS AND CERTIFICATIONS FOR PAYMENT
01 31 14	ADDITIONAL REQUIREMENTS FOR DSA REVIEWED PROJECTS
01 31 19	PROJECT MEETINGS
01 31 25	WEB-BASED PROJECT MANAGEMENT SYSTEM
01 33 00	SUBMITTAL PROCEEDURES
01 41 00	REGULATORY REQUIREMENTS
01 42 00	REFERENCES
01 45 00	QUALITY CONTROL
01 50 00	TEMPORARY FACILITIES AND CONTROLS
01 56 10	DUST CONTROL MEASURES
01 57 30	STORM WATER POLLUTION PREVENTION
01 60 00	PRODUCT REQUIREMENTS
01 71 23	FIELD ENGINEERING
01 73 20	DEMOLITION PROCEEDURES
01 73 29	CUTTING AND PATCHING
01 74 10	CLEANING
01 74 17	SITE MAINTENANCE AND CLEANUP
01 74 19	CONSTRUCTION WASTE MANAGEMENT
01 77 00	CLOSEOUT PROCEEDURES
01 78 39	PROJECT RECORD DOCUMENTS
01 81 13	SUSTAINABLE DESIGN REQUIREMENTS
<b>DIVISION 02 – EXISTING CONDITIONS</b>	
02 30 00	SUBSURFACE INVESTIGATION
02 41 00	DEMOLITION
02 82 13	ASBESTOS ABATEMENT
02 83 33	REMOVAL AND DISPOSAL OF MATERIAL CONTAINING LEAD
02 84 16	HAZARDOUS MATERIALS REMOVAL AND DISPOSAL
<b>DIVISION 03 – CONCRETE</b>	
03 30 53	MISCELLANEOUS CAST-IN-PLACE CONCRETE
<b>DIVISIONS 04-49 – NOT USED</b>	

End of Exhibit "A"

## Foothill – De Anza Community College District Sunnyvale Education Center Demolition

### QUALIFICATIONS & CLARIFICATIONS

VERSION 1.1

17 JUNE 2013

#### **I. CONTRACT AMOUNT:**

The GMP amount of **\$3,744,150** was formulated as follows:

Contractor's Construction Services	\$476,296
Direct Cost of the Work	\$2,805,042
Overhead & Fee (2.96%)	\$97,128
Allowances	\$337,634
Contractor Stipulated Contingency (1%)	\$28,050
<b>Total GMP</b>	<b>\$3,744,150</b>

The GMP amount and scope of work is summarized on the attached GMP Summary Sheet dated 14 June 2013 and further clarified in the following clarifications, specific inclusions and exclusions.

#### **II. GENERAL CLARIFICATIONS & QUALIFICATIONS:**

1. The GMP is based on the set of documents listed within the attached Project Documents Listing dated 14 June 2013, and the clarifications and qualifications herein.
2. GMP pricing is based on the start of demolition on or before 21 July 2013.
3. Builder's Risk insurance is excluded.
4. A Prime Contract Bond is included.
5. Performance and payment bond for Abatement & Demolition Subcontractor is included.
6. Contractor shall comply with the attached Exhibit "E" Construction schedule titled *Foothill-DeAnza Community College District Educational Center Project Schedule 14-June-13*, run-dated 14 June 2013. As noted within the schedule, the following project milestones shall be completed no later than dates below:
  - a. Substantial Project Completion: 18 February 2014
7. Schedule recovery for delays due to archeology discoveries is excluded.
8. Building permit, city required bonds, tie-back agreements, plan check and any other extraordinary governmental and authority fees are excluded.
9. Design & engineering fees, and errors & omissions insurance are excluded.
10. Costs for building department, fire department and/or fire marshal plan corrections are excluded.
11. Testing and inspection fees are excluded.
12. Contractor's prime bond is included in Contractor's Construction Services

**Foothill – De Anza Community College District  
Sunnyvale Education Center Demolition**

**QUALIFICATIONS & CLARIFICATIONS**

VERSION 1.1  
17 JUNE 2013

13. Contractor’s standard project management database software is included (ViewPoint). Purchase of any other or auxiliary software or systems is excluded.
14. Preconstruction services are performed under separate agreement.
15. Dewatering due to groundwater is excluded.
16. Offsite and joint trench work is excluded.

**III. SCOPE SPECIFIC CLARIFICATIONS & QUALIFICATIONS:**

1. Contractor shall perform all demolition, abatement and site clearing work as shown or which can be reasonably inferred by site conditions and the Contract Documents.
2. A visual and recorded site survey to document existing conditions prior to the start of work is included.
3. The project site is comprised five (5) parcels of land owned by three different stakeholders; Foothill - De Anza Community College District (FDACCD), Veterans Affairs (VA) and the City of Sunnyvale (City). The scope of work included herein involves all three stakeholders’ parcels; FDACCD at Parcel C, VA at Parcel A & B, and City at Parcel D & E (ref. C-3). An overview/summary of work to be completed is as follows:
  - A. General Site (all parcels)
    - i. All existing site perimeter concrete block, wrought iron and concrete walls to remain for construction containment purposes. Demolition of perimeter fencing/walls is excluded from the demolition phase of work.
  - B. VA (Parcel B)
    - i. Building 1002 to remain with selective areas to be demolished. Building lobby and all catwalks and stairways at south building elevation “alley” to be removed to face of building. Contractor to coordinate locations for all saw-cutting, rough grading and finish grade levels to remain.
    - ii. All hardscape, slabs and AC paving shall remain, except where specifically noted on the plans for removal.
    - iii. Building 1018 & 1034 shall be demolished to slab elevation (deductive alternate provided below).
    - iv. Cut and cap utilities per Contract Documents. Remove as required to perform demolition work.
  - C. FDACCD (Parcel C)
    - i. Demolish Building 1001, 1003, 1006, 1008, cooling tower, 10031, 10032 including foundations as noted.
    - ii. Demolish Building 1004, 1005, 1040, which overlap the City/FDACCD parcel boundary, entirely, including foundations as noted.
    - iii. Remove all hardscape, slabs, AC paving, above ground and underground utilities and utilities not marked to remain (on Contract Documents or in situ), and ALL surface improvements (i.e. fencing, gates, bollards, light poles, storage units, tanks, wells, generators, hazardous material

**Foothill – De Anza Community College District  
Sunnyvale Education Center Demolition**

**QUALIFICATIONS & CLARIFICATIONS**

VERSION 1.1  
17 JUNE 2013

- storage, curbs, planters, and all other items above the surface) not specifically marked to protect or remain on Contract Documents or in situ.
- iv. Cut and cap utilities per Contract Documents. Remove as required to perform demolition work.
- D. City (Parcel D & E)
- i. Demolish Building 1007, 1009, 1012 & 1013 to slab elevation
  - ii. Remove/cut/cap all above ground utilities not marked to remain (on Contract Documents or in situ), and remove ALL surface improvements (i.e. fencing, gates, bollards, light poles, curbs, planters, security barriers and gate system and all other items above the surface) not specifically marked to protect or remain on Contract Documents or in situ.
  - iii. All hardscape, slabs and AC paving shall remain
  - iv. Cut and cap utilities per Contract Documents. Remove as required to perform demolition work.
4. Contractor includes removal of all hazardous material from the project as indicated in the Contract Documents and remediation reports in buildings 1001, 1002-500, 1003, 1004, 1005, 1006, 1007, 1008, 1013, 1015, 1020, 1025, 1035, 1040, 1042, 10031, 10032 and cooling tower including but not limited to:
    - a. Asbestos
    - b. Lead
    - c. Universal waste materials
    - d. Devices and materials containing PCB's
    - e. Devices containing ozone depleting chemicals
  5. The abatement scope is based on the hazardous material drawings included in the Project Documents Listing dated 14 June 2013 and report by Vista Environmental titled "Pre-Demolition Hazardous Materials Survey Report" dated 17 January 2013. Any and all unforeseen hazardous material(s) not included within these documents are excluded (see Section IV, "Allowances").
  6. Contractor shall remove and dispose of all ancillary furniture, appliances, equipment, etc. that is not shown to be salvaged.
  7. Removal of residual contamination from all mechanical equipment per General Note 9 on the Hazmat HD plans is included. Contractor/Subcontractor shall submit "Hold-Harmless Agreement" documentation to Owner upon removal of vendor-salvaged equipment.
  8. All noise abatement and sound walls excluded. Noise and vibration control shall conform to standard OSHA requirements.
  9. Locating, cutting and capping of all utilities shown on the plans shall be provided to abandon in place as required per plans and specifications. Re-routing of existing utilities is excluded.
  10. Export of surplus soils from the jobsite is excluded. All crushed rock generated from demolition shall be used as grading fill material and/or stockpiled and stored onsite for future use.
  11. The project SWPPP plan shall be maintained as described within the Construction Documents throughout the duration of demolition activities. Scheduling and implementation of all required water testing, BMP inspections are

**Foothill – De Anza Community College District  
Sunnyvale Education Center Demolition**

**QUALIFICATIONS & CLARIFICATIONS**

VERSION 1.1  
17 JUNE 2013

included. Contractor has included SWPPP maintenance for a total duration of two (2) months following project completion.

12. It is understood that this project shall ultimately obtain LEED certification (ref. Specification Division 01). All material demolition and removal shall comply with California State Health Services Standard Practices and 2009 Green Building Design & Construction Practices per Contract Documents. Contractor will provide waste management and disposal plan to comply with Specification 017419. Included shall be reports for all salvageable and recyclable content to classify applicable LEED credits. Any requirements exceeding the above noted scope are excluded.
13. One (1) unarmed security guard shall be provided 24hrs/day, 7days/week. Two (2) additional 24/7 security guards are included for nine (9) weeks to monitor salvaged material and equipment prior to being removed.
14. Storage bins for storing of items to be salvaged for Owner are excluded. Delivery of salvaged items to an offsite location is excluded.
15. GMP pricing is based on one (1) mobilization and continuous work until substantial completion.
16. Two (2) time/lapse or webcams to record demolition is included.
17. Removal of all below grade hazardous material (ref. Note 42, HD-110) is excluded.
18. Removal of extraordinary underground objects (buried tanks, vaults, abandoned utilities, etc.) that are not identified by destructive site investigation is excluded (ref. Site Investigation Report dated 03 April 2013 by LVI Services).

**IV. SCOPE SPECIFIC ALLOWANCES:**

Hydroseed	\$11,500
Unforeseen Conditions	\$326,134
<b>Total Allowances</b>	<b>\$337,634</b>

**V. ALTERNATES:**

1. Deductive alternate for Building 1018 to remain as-is: <\$10,000>
  - a. *Accepted by District*
2. Deductive alternate for Building 1034 to remain as-is: <\$10,000>

Activity ID	Activity Name	DUR	Start	Finish	2013						2014				
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
<b>12021 Foothill - De Anza CCD - Educational Center</b>															
<b>CONSTRUCTION</b>															
<b>Demolition</b>															
DEMO-1110	Notice to Proceed	0	08-Jul-13*												
DEMO-1050	Mobilization	5	15-Jul-13	19-Jul-13											
DEMO-1070	SWPPP	5	15-Jul-13	19-Jul-13											
DEMO-1060	Safe off Utilities	10	15-Jul-13	26-Jul-13											
<b>Bldg. 1003</b>															
DEMO-1120	Bldg. 1003	0	22-Jul-13		◆ Bldg. 1003										
DEMO-1080	Abatement	55	22-Jul-13	07-Oct-13											
DEMO-1300	Demo	50	24-Sep-13	05-Dec-13											
<b>Bldg. 1001 #1</b>															
DEMO-1880	Bldg. 1001	0	03-Sep-13												
DEMO-1700	Abatement 1001	64	03-Sep-13	04-Dec-13											
<b>Bldg. 10032</b>															
DEMO-1760	Bldg.10032	0	19-Nov-13												
DEMO-1770	Abatement	10	19-Nov-13	04-Dec-13											
DEMO-1840	Demo	15	05-Dec-13	26-Dec-13											
<b>Bldg. 10031</b>															
DEMO-1790	Bldg.10031	0	19-Nov-13												
DEMO-1220	Abatement	11	19-Nov-13	05-Dec-13											
DEMO-1780	Demo	15	27-Dec-13	17-Jan-14											
<b>Bldg. 1005</b>															
DEMO-1310	Bldg. 1005	0	05-Dec-13												
DEMO-1320	Abatement 1005	3	05-Dec-13	09-Dec-13											
DEMO-1330	Demo 1005	3	10-Dec-13	12-Dec-13											
<b>Bldg. 1009 /1012</b>															
DEMO-1340	Bldg. 1009 / 1012	0	13-Dec-13												
DEMO-1350	Demo	2	13-Dec-13	16-Dec-13											
<b>Bldg. 1013</b>															
DEMO-1360	Bldg. 1013	0	10-Dec-13												
DEMO-1370	Abatement 1013	8	10-Dec-13	19-Dec-13											
DEMO-1390	Demo 1013	3	20-Dec-13	24-Dec-13											
<b>Bldg. 1007</b>															
DEMO-1400	Bldg. 1007	0	20-Dec-13												
DEMO-1410	Abatement 1007	6	20-Dec-13	30-Dec-13											
DEMO-1420	Demo 1007	2	31-Dec-13	02-Jan-14											

Printed On: 14-Jun-13  
Page 1 of 3  
Data Date: 14 June 2013

**Foothill-DeAnza Community College District  
Educational Center  
Project Schedule 14-Jun-13**





Activity ID	Activity Name	DUR	Start	Finish	2013						2014				
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	
<b>Bldg. 1008 ( Fuel Storage / Cooling Tower )</b>															
DEMO-1430	Bldg. 1008 Fuel Storage	1	31-Dec-13	31-Dec-13											
DEMO-1440	Abatement 1008	2	02-Jan-14	03-Jan-14											
DEMO-1450	Demo 1008	1	03-Jan-14	03-Jan-14											
<b>Bldg. 1035</b>															
DEMO-1480	Bldg. 1035	0	06-Jan-14												
DEMO-1490	Abatement 1035	1	06-Jan-14	06-Jan-14											
DEMO-1500	Demo 1035	1	08-Jan-14	08-Jan-14											
<b>Cooling Tower</b>															
DEMO-1460	Cooling Tower	0	06-Jan-14												
DEMO-1470	Demo Cooling Tower	1	06-Jan-14	06-Jan-14											
<b>Bldg. 1015</b>															
DEMO-1510	Bldg. 1015	0	07-Jan-14												
DEMO-1520	Abatement 1015	1	07-Jan-14	07-Jan-14											
DEMO-1530	Demo 1015	1	09-Jan-14	09-Jan-14											
<b>Bldg. 1040</b>															
DEMO-1540	Bldg. 1040	0	08-Jan-14												
DEMO-1550	Abatement 1040	3	08-Jan-14	10-Jan-14											
DEMO-1800	Demo	1	13-Jan-14	13-Jan-14											
<b>Bldg. 1002</b>															
DEMO-1570	Bldg. 1002	0	13-Jan-14												
DEMO-1580	Abatement 1002	1	13-Jan-14	13-Jan-14											
DEMO-1590	Closure Wall 1002	8	14-Jan-14	23-Jan-14											
<b>Bldg. 1004</b>															
DEMO-1600	Bldg. 1004	0	14-Jan-14												
DEMO-1610	Abatement 1004	15	14-Jan-14	03-Feb-14											
DEMO-1620	Equipment Removal 1004	8	23-Jan-14	03-Feb-14											
DEMO-1630	Demo 1004	15	28-Jan-14	17-Feb-14											
<b>Bldg. 1020</b>															
DEMO-1640	Bldg 1020	0	04-Feb-14												
DEMO-1810	Abatement	2	04-Feb-14	05-Feb-14											
<b>Bldg. 1025</b>															
DEMO-1660	Bldg. 1025	0	06-Feb-14												
DEMO-1670	Abatement 1025	1	06-Feb-14	06-Feb-14											
DEMO-1680	Demo 1025	1	18-Feb-14	18-Feb-14											
<b>Bldg. 1001</b>															
DEMO-1690	Bldg. 1001	0	05-Dec-13												
DEMO-1710	Above Grade Demo 1001	15	06-Dec-13	27-Dec-13											

**Foothill-DeAnza Community College District**  
**Educational Center**  
**Project Schedule 14-Jun-13**



Activity ID	Activity Name	DUR	Start	Finish	2013						2014					
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr		
DEMO-1720	Slab and Foudation Demo 1001	5	30-Dec-13	06-Jan-14							■	Slab and Foudation Demo 1001				
<b>Bldg. 1006</b>												◆	Bldg. 1006			
DEMO-1730	Bldg. 1006	0	07-Feb-14									■	Abatement 1006			
DEMO-1740	Abatement 1006	3	07-Feb-14	11-Feb-14								■	Demo 1006			
DEMO-1750	Demo 1006	2	17-Feb-14	18-Feb-14												
<b>Concrete Recycle</b>												■	Concrete Crushing			
DEMO-1830	Concrete Crushing	38	17-Dec-13	10-Feb-14								■	Pavement / Underground U			
DEMO-1820	Pavement / Underground Utilities	15	20-Jan-14	07-Feb-14												
<b>Project Close Out</b>												■	Clean-up			
DEMO-1850	Clean-up	5	12-Feb-14	18-Feb-14								■	Punch List			
DEMO-1860	Punch List	5	12-Feb-14	18-Feb-14								■	Demobilization			
DEMO-1870	Demobilization	5	12-Feb-14	18-Feb-14								◆	Substantial Completion			
DEMO-1890	Substantial Completion	0		18-Feb-14												
DEMO-1900	Final Completion	0		20-Mar-14											◆	Final Comple

**Foothill-DeAnza Community College District**  
**Educational Center**  
**Project Schedule 14-Jun-13**



## **EXHIBIT “B”**

### **DESCRIPTION of SITE**

#### **Site Plan**

The real property leased to the Contractor for construction of the Project is indicated on the attached Supplemental Plat of the Onizuka Air Force Station Tract prepared by the U.S. Bureau of Land Management, dated November 3, 2011.

#### **Demolition Phase Site**

During the Demolition Phase of the Project, the site consists of the District’s Parcel C; parcels A and B, owned by the Veterans Administration (VA); and parcels D and E, owned by the City of Sunnyvale (City). The District has entered into a Memorandum of Agreement with the VA and a separate Memorandum of Agreement of Agreement with the City to provide for demolition activities on their parcels.

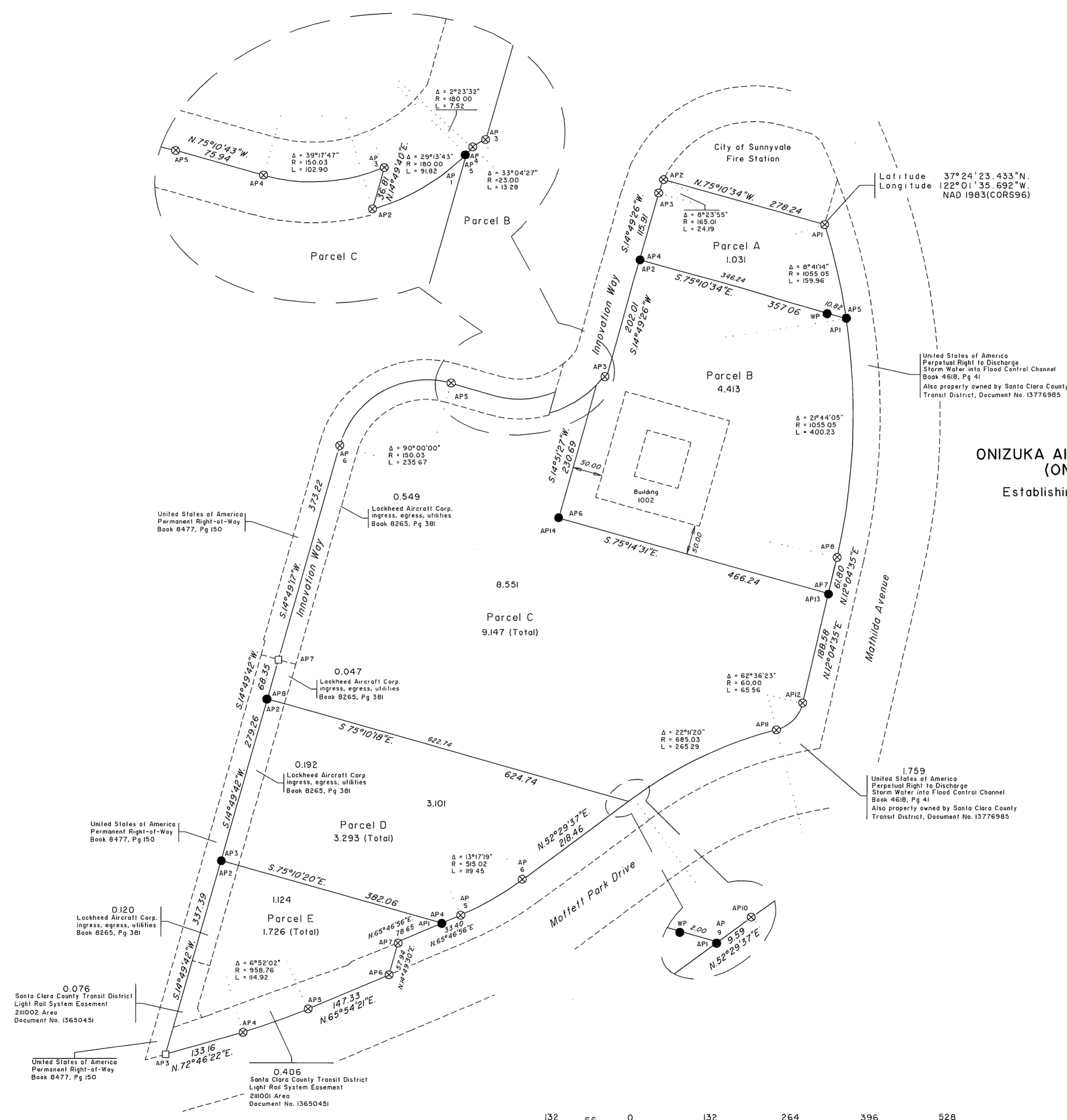
#### **Early Site Work and Building Construction Phase Site**

During the Early Site Work Phase and Site and the Building Construction Phase, the site consists of only Parcel C, owned by the District.

END OF EXHIBIT “B”

TOWNSHIP 6 SOUTH, RANGE 2 WEST, OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA.

SUPPLEMENTAL PLAT



Latitude 37° 24' 23.433"N,  
Longitude 122° 01' 35.692"W,  
NAD 1983(CORS96)

United States of America  
Perpetual Right to Discharge  
Storm Water into Flood Control Channel  
Book 4618, Pg 41  
Also properly owned by Santa Clara County  
Transit District, Document No. 13776985

**ONIZUKA AIR FORCE STATION TRACT  
(ONIZUKA TRACT)**  
Establishing Parcels A, B, C, D, and E.

This supplemental plat showing easements for light rail and perimeter roadways relative to the Onizuka Air Force Station Tract, Township 6 South, Range 2 West, Mount Diablo Meridian, California, is based on a preliminary title report provided by the General Services Administration, (GSA), realty documents made available by Onizuka Air Force Station personnel, and the two plats accepted September 30, 2011 for Group No. 1637, California. The location of Mathilda Avenue and Moffett Park Drive is displayed for relative positioning to the Onizuka Air Force Station Tract. There is no guarantee as to the completeness of the easement documentation provided to us and depicted on this plat.

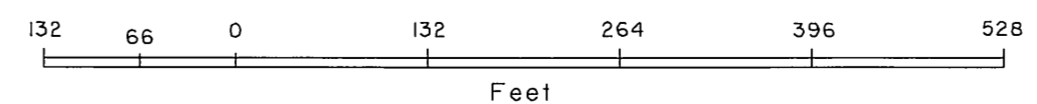
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Sacramento, California

This plat, having been correctly prepared in accordance with the requirements of law and this Bureau, is hereby accepted.

For the Director

*James G. [Signature]* November 3, 2011  
Chief Cadastral Surveyor-California

- LEGEND**
- Local Evidence Recovered; Not Remonumented
  - Position Determined and Monumented
  - ⊗ GLO/BLM Monument
  - Tract / Parcel
  - - - Easement



D. a. d.  
G. A.

**EXHIBIT "C"**  
**LEASE PAYMENT SCHEDULE**  
**DEMOLITION PHASE**

The District shall make Lease Payments for the Facilities Lease in conformance with and subject to the terms and conditions for Progress Payments and Final Payment for each Project Phase as set forth in the Construction Provisions, Exhibit "D3".

The total amount of Lease Payments for each Project Phase shall not exceed the sum of the Guaranteed Maximim Price (GMP) for each Project Phase and the cost of Extra Work and Changes made in accordance with the Construction Provisions.

The Guaranteed Maximim Price for each Project Phase and the Guaranteed Maximum Price for all Project Phases is summarized below.

Retention held in accordance with Construction Provisions Article 9.3 will be released to the Contractor by the District upon completion of each Project Phase.

<b>PRICE SUMMARY</b>		
PROJECT PHASE	GUARANTEED MAXIMUM PRICE	STATUS
A DEMOLITION	\$ 3,744,150	GMP approved 7/1/13
B EARLY SITE WORK and BUILDING & SITE	\$ 21,255,850	Remaining budget
C TOTAL A+B	\$ 25,000,000	Project GMP

The following documents are attached and are incorporated in this Exhibit "C":

Guaranteed Maximum Price Summary Sheet, dated June 14, 2013

**FHDA EDUCATION CENTER DEMOLITION**

**EXHIBIT "C"**

**GMP SUMMARY SHEET**

June 13, 2013

Seq	Description	Notes	Total
<b>Contractor's Construction Services</b>			
1	Project (CWD Staff)	(7) mo.	245,518
2	Temp Utilities		11,222
3	Direct Job Costs	Included	
4	Temp Facilities		37,231
5	Misc. Project Costs (Contractor's Bond 0.64% & Insurance 0.67%)		35,377
6	Contractor's Main Office Staff	In OH & Fee	
<b>Subtotal</b>			329,348
7	Construction Services - scope not in RFP		53,615
8	Additional Asst. Superintendent (2/3 FDA)	(4) mo.	58,552
9	Increased Schedule Duration	1.5 wks	25,210
10	Updated Labor Rates		9,571
<b>Total Contractor's Construction Services</b>			476,296
<b>Direct Cost of the Work</b>			
11	Project (Independent Surveyor & Intern)		32,760
12	Temp Utilities		281,592
13	Direct Job Costs		5,500
14	Temp Facilities		76,247
15	Misc. Project Costs (Sub Bonds)	In Subs Below	
16	Hoisting/Conveyance	In Subs Below	
17	Hazardous Material Abatement & Demolition		2,344,000
18	Electrical & Fire Alarm		64,943
<b>Total Direct Cost of the Work</b>			2,805,042
<b>Allowances</b>			
19	Hydroseed		11,500
20	Unforeseen Conditions at 10%		326,134
<b>Total Allowances</b>			337,634
<b>SUBTOTAL</b>			3,618,972
<b>Contractor's Contingency, Overhead &amp; Profit</b>			
21	Contractor Stipulated Contingency (Direct Work Only)	1.00%	28,050
22	Owner Contingency	By Owner	
23	Sub Bonds	with sub quotes	
24	Preconstruction	Excluded	
25	General Conditions	Included Line 1-6	
26	Permits & Special Insur. Builders risk	Excluded	
27	City Tax	Excluded	
28	Liability Insurance (Included in Line 5 Above)		
29	Overhead & Fee	2.96%	97,128
30	Prime Bond (Included in Line 5 Above)		
<b>Total GMP</b>			<b>3,744,150</b>

**EXHIBIT D1 to FACILITIES Lease - SPECIAL PROVISIONS  
DEMOLITION PHASE**

1. **Application of Special Provisions.** These Special Provisions are a part of the Contract Documents for the Work. These Special Provisions shall control over the Construction Provisions.
  
2. **Lease Leaseback Provisions.** The following information supplements the Construction Provisions Articles referenced:
  - 2.4.1 **GMP.** The Guaranteed Maximum Price shall be as stated in Exhibit “C”, Lease and Payment Schedule.
  
  - 2.11 **Time of Completion of Construction Services.**  
Substantial Completion shall be achieved within 226 calendar days after Notice to Proceed.  
Final Completion shall be achieved within 254 calendar days after Notice to Proceed.
  
  - 2.12 **Liquidated Damages.**  
Substantial Completion: \$2,000 per calendar day.  
Liquidated Damages shall be paid by the Contractor beginning 28 calendar days after the Substantial Completion date established in Article 2.11 above: 254 calendar days after Notice to Proceed.
  
3. **Demolition Phase Modifications.** The following Articles are modified to apply specifically to the Demolition Phase of the Project. The Articles below REPLACE the corresponding Articles in the Construction Provisions.
  - 2.1 **Approved Construction Documents.** Construction Documents for the Project have been accepted by the District and are incorporated herein by reference.
  
  - 7.2 **Commercial General Liability and Property Insurance.** The Contractor shall maintain or cause to be maintained Commercial General Liability insurance, including operations, products and completed operations and contractual liability, to protect against loss for which Contractor becomes liable on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons on or about the Site and the business of Contractor on the Site, or in connection with the operation thereof, resulting directly or indirectly from the acts or activities of the Contractor, or any person acting for the Contractor or under Contractor’s respective control or direction. Such General Liability coverage shall also protect against loss for damages to any property of any person occurring on or about the Site, or in connection with the operation thereof, caused directly or indirectly by or from the acts or activities of the Contractor, or any person acting for Contractor or under Contractor’s respective control or direction. Such General Liability coverage shall provide for and protect the District, the U.S. Department of Veterans Affairs, and the City of Sunnyvale against incurring legal costs in defending claims against any loss or alleged loss as described herein. The limits of liability for the Commercial General Liability and Property Insurance required hereunder shall be as set forth in Article 2.19 of these Construction Provisions.

**7.3 Builder’s Risk “Special Form” Insurance.** Builder’s Risk insurance is not required for the Demolition Phase.

**7.5.1 Certificates of Insurance / Declaration Page.** Prior to commencing the Work, Contractor shall deliver to the District Certificates of Insurance and a declaration page evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance and declaration page may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and declaration page and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District, the U.S. Department of Veterans Affairs, the City of Sunnyvale, the Architect and the Program Manager as an additional insured as its interests may appear, except in the case of Worker’s Compensation and Employer’s Liability Insurance. Should any policy of insurance... (Remainder of Article is unchanged.)

**7.8 Indemnity.** Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties (as that term is hereinafter defined), the Contractor shall to the fullest extent permitted by law and in proportion to its own liability, indemnify, defend and hold harmless: (i) the District and its Board of Trustees and its members, officers, employees, agents and representatives (including the District’s Inspector and the Program Manager); (ii) the Architect and its consultants for the Work and their respective agents and employees; (iii) if one is designated by the District for the Work, the Program Manager and its agents and employees; (iv) the U.S. Department of Veterans Affairs; and the City of Sunnyvale. The foregoing are individually and collectively hereinafter referred to as “the Indemnified Parties.” The Contractor’s obligations hereunder... (Remainder of Article is unchanged.)

**8.2.2 Substantial Completion.** Substantial completion for the Demolition Phase is that stage of demolition activities when the on-site work described in the Construction Documents is complete and the site is fenced and secure.

**2.19.1 Insurance.** The Contractor shall purchase and maintain Workers’ Compensation Insurance, Employer’s Liability Insurance, Commercial General Liability and Property Insurance, and Builder’s Risk Insurance in accordance with Article 7 of these Construction Provisions, in the following amounts:

**Commercial General Liability Insurance:**

Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Excess Liability Per Occurrence	\$10,000,000
Excess Liability Aggregate	\$10,000,000

**Automobile Liability Insurance\*\***

Per Occurrence	\$1,000,000
----------------	-------------

<b>Builders Risk</b>	Not Required
----------------------	--------------



**Worker Compensation/Employers Liability Insurance**

Per Statute

**Professional Liability**

Per Occurrence

\$1,000,000

Aggregate

\$1,000,000

\*\* Automobile Liability Insurance applicable to all company-owned, non-owned and hired vehicles, (or “any” auto).

**END OF SPECIAL PROVISIONS**

**EXHIBIT D2 - SUPPLEMENTAL PROVISIONS****ARTICLE 1: ADMINISTRATION OF CONSTRUCTION CAREERS PROGRAM****1.1 Construction Careers Program Participation**

**1.1.1 Construction Careers Program.** The Contractor and its Subcontractors of all tiers, having agreed to the terms Project Stabilization/Construction Careers Agreement, shall employ District students/graduates (Student Employees) as apprentices or interns as a part of the Foothill-De Anza Community College District Construction Careers Program.

**1.1.1.1 Apprentices.** Apprentices are students participating in the Foothill Apprenticeship Program as supported by the Building Trades Council.

**1.1.1.2 Interns.** Interns are students participating in the Foothill-De Anza Community College District Internship and Training Program. Interns shall not perform construction trades craftwork performed by Apprentices.

**1.1.2 Compliance with Construction Careers Program.** The Contractor and its subcontractors shall comply with the requirements of these Supplemental Provisions.

**1.1.2.1 Student Employee Status.** Student Employees may be Apprentices or Interns, or any combination thereof.

**1.1.2.2 Student Employee Assignments.** The Contractor may employ Student Employees on the District project that is a part of this Contract, on other projects, or on a combination of projects, to the best benefit of the Contractor and the Student Employee.

**Student Employee Requirement.** To be considered in compliance with the Construction Careers Program for this Project the Contractor and its Subcontractors shall make a good faith effort to hire Apprentices as required by Article 1.2. The Contractor is also encouraged to employ Interns as described in Article 1.3.

**1.1.2.3 Compliance Plan.** Within fourteen (14) days of award of contract by the District's Board of Trustees the Contractor shall submit to the Program Manager a written plan to achieve the requirements of these Supplemental Provisions and those of the Construction Careers Agreement. The District will respond with approval or comments within seven (7) days.

**1.1.2.4 Documentation.** The General Contractor shall report monthly to the District as a part of its application for Progress Payments and at Final Payment, the number and status of Student Employees employed or utilized by the Contractor and its Subcontractors.

**1.1.2.5 Overhead Costs.** The Contractor's costs for preparation and execution of the compliance plan, good faith efforts and other compliance costs shall be included in the Contractor's base bid overhead cost.

## 1.2 Employment of Apprentices

**1.2.1 Good Faith Effort to Hire Apprentices.** The Contractor shall make a good faith effort, as required by the Construction Careers Agreement, to hire Apprentices participating in State certified programs administered by the District.

**1.2.1.1 District Proposed Apprentices.** The District shall have the first opportunity to provide qualified Apprentices participating in its apprenticeship program for employment consideration, subject to any collective bargaining agreements, and the local program rules, regulations and standards approved by the Division of Apprenticeship Standards.

**1.2.1.2 Trade Union Participation.** The Contractor and its subcontractor(s) shall request trade unions to dispatch qualified individuals participating in programs administered by the District, by name when feasible, subject to any collective bargaining agreements and the local program rules, regulations and standards approved by the Division of Apprenticeship Standards.

**1.2.2 Payment of Apprentices.** Apprentices shall be hired and paid by the Contractor in accordance with applicable collective bargaining agreements, shall be employees of the Contractor, and their costs shall be treated as part of the Contractor's or Subcontractors' costs.

## 1.3 Utilization of Interns

**1.3.1 District Internship and Training Program (Program).** At the request of the Contractor, the District will assist the Contractor in identification of students to be employed by the Contractor as interns. Employment of interns by the Contractor will be considered as partial compliance with the Construction Careers Program, but is not mandatory.

**END OF SUPPLEMENTAL PROVISIONS**

**CONSTRUCTION PROVISIONS**  
**Exhibit D3 to Facilities Lease**

**TABLE OF CONTENTS**

**ARTICLE 1: DEFINITIONS; GENERAL**

- 1.1 **District**
- 1.2 **Contractor**
- 1.3 **Architect**
- 1.4 **The Work**
- 1.5 **The Project**
- 1.6 **Surety**
- 1.7 **Subcontractors; Sub-Subcontractors**
- 1.8 **Material Supplier**
- 1.9 **Drawings and Specifications**
- 1.10 **Construction Documents**
- 1.11 **Contract Documents**
- 1.12 **Intent and Correlation of Contract Documents**
- 1.13 **Shop Drawings; Samples; Product Data ("Submittals")**
- 1.14 **Division of State Architect ("DSA")**
- 1.15 **District's Inspector**
- 1.16 **Contract Document Terms**
- 1.17 **Contractor's Superintendent**
- 1.18 **Record Drawings**
- 1.19 **Program Manager**
- 1.20 **Construction Equipment**
- 1.21 **Site**
- 1.22 **Architect's Supplemental Instructions and Bulletins**
- 1.23 **Defective or Non-Conforming Work**
- 1.24 **Delivery**
- 1.25 **Notice to Proceed**
- 1.26 **Daily Reports**
- 1.27 **Phrases and Terms**
- 1.28 **Owner**
- 1.29 **College**
- 1.30 **Omission**
- 1.31 **Error**
- 1.32 **Contract**
- 1.33 **Allowances**
- 1.34 **Construction**

**ARTICLE 2: LEASE LEASEBACK PROVISIONS**

- 2.1 **Approved Construction Documents**
- 2.2 **Contractor's Acceptance of Contract Documents and Site Conditions**
- 2.3 **Contractor's Duties and Status**
- 2.4 **Guaranteed Maximum Price**
- 2.5 **Project Contingency Funds**

- 2.6 **District's Contingency Fund**
- 2.7 **Contractor's Contingency Fund**
- 2.8 **Cost Savings**
- 2.9 **Scope of Work for Contractor's Construction Services**
- 2.10 **Extra Work and Changes**
- 2.11 **Time of Completion of Construction Services**
- 2.12 **Liquidated Damages**
- 2.13 **Progress Schedule**
- 2.14 **Progress Payments for Construction Services**
- 2.15 **Payments Withheld**
- 2.16 **Acceptance of Completion; Release of Retention**
- 2.17 **Payments by Contractor**
- 2.18 **Contractor's Supervision**
- 2.19 **Insurance**
- 2.20 **Project Stabilization Agreement / Construction Careers Agreement**

**ARTICLE 3: DISTRICT**

- 3.1 **Information Required of District**
- 3.2 **District's Rights to Stop the Work**
- 3.3 **Partial Occupancy or Use**
- 3.4 **The District's Inspector**

**ARTICLE 4: THE ARCHITECT**

- 4.1 **Architect's Administration of the Contract**
- 4.2 **Communications; Architect's and Program Manager's Roles**

**ARTICLE 5: THE CONTRACTOR**

- 5.1 **Contractor Review of Contract Documents**
- 5.2 **Site Investigation; Subsurface Conditions**
- 5.3 **Supervision and Construction Procedures**
- 5.4 **Labor and Materials**
- 5.5 **Taxes**
- 5.6 **Permits, Fees and Notices; Compliance With Laws**
- 5.7 **Submittals**
- 5.8 **Materials and Equipment**
- 5.9 **Safety**
- 5.10 **Maintenance of Documents**
- 5.11 **Use of Site**
- 5.12 **Clean-Up**
- 5.13 **Access to the Work**
- 5.14 **Facilities and Information for the District's Inspector**
- 5.15 **Patents and Royalties**
- 5.16 **Cutting and Patching**
- 5.17 **Encountering of Hazardous Materials**
- 5.18 **Wage Rates; Employment of Labor**
- 5.19 **Assignment of Antitrust Claims**

**ARTICLE 6: SUBCONTRACTORS**

- 6.1 **Subcontracts**
- 6.2 **Substitution of Listed Subcontractor**

**ARTICLE 7: INSURANCE; INDEMNITY; BONDS**

- 7.1 **Workers' Compensation Insurance; Employer's Liability Insurance**
- 7.2 **Commercial General Liability and Property Insurance**
- 7.3 **Builder's Risk "All-Risk" Insurance**
- 7.4 **Coverage Amounts**
- 7.5 **Evidence of Insurance; Subcontractor's Insurance**
- 7.6 **Maintenance of Insurance**
- 7.7 **Contractor's Insurance Primary**
- 7.8 **Indemnity**
- 7.9 **Payment Bond; Performance Bond**

**ARTICLE 8: CONTRACT TIME**

- 8.1 **Substantial Completion of the Work Within Contract Time**
- 8.2 **Progress and Completion of the Work**
- 8.3 **Progress Schedule**
- 8.4 **Adjustment of Contract Time**
- 8.5 **Liquidated Damages**

**ARTICLE 9: GUARANTEED MAXIMUM PRICE**

- 9.1 **Guaranteed Maximum Price**
- 9.2 **Cost Breakdown**
- 9.3 **Progress Payments**
- 9.4 **Final Payment**
- 9.5 **Withholding of Payments**
- 9.6 **Payments to Subcontractors**

**ARTICLE 10: CHANGES**

- 10.1 **Changes in the Work**
- 10.2 **Contractor Submittal Data**
- 10.3 **Adjustment to GMP and Contract Time on Account of Changes to the Work**
- 10.4 **Change Orders**
- 10.5 **Contractor Notice of Change**
- 10.6 **Disputed Changes**
- 10.7 **Emergencies**
- 10.8 **Minor Changes in the Work**
- 10.9 **Unauthorized Changes**

**ARTICLE 11: SEPARATE CONTRACTORS**

- 11.1 **District's Right to Award Separate Contracts**
- 11.2 **District's Coordination of Separate Contractors**
- 11.3 **Mutual Responsibility**
- 11.4 **Discrepancies or Defects**

**ARTICLE 12: TESTS AND INSPECTIONS**

- 12.1 **Tests; Inspections; Observations**
- 12.2 **Delivery of Certificates**
- 12.3 **Timeliness of Tests, Inspections and Approvals**

**ARTICLE 13: UNCOVERING AND CORRECTION OF WORK**

- 13.1 **Inspection of the Work**
- 13.2 **Uncovering of Work**
- 13.3 **Rejection of Work**
- 13.4 **Correction of Work**
- 13.5 **Removal of Non-Conforming or Defective Work**
- 13.6 **Failure of Contractor to Correct Work**
- 13.7 **Acceptance of Defective or Non-Conforming Work**

**ARTICLE 14: WARRANTIES**

- 14.1 **Workmanship and Materials**
- 14.2 **Warranty Work**
- 14.3 **Guarantee**
- 14.4 **Survival of Warranties**

**ARTICLE 15: SUSPENSION OF WORK**

- 15.1 **District's Right to Suspend Work**
- 15.2 **Adjustments to Contract Price and Contract Time**

**ARTICLE 16: TERMINATION**

- 16.1 **Termination for Cause**
- 16.2 **Termination for Convenience of the District**
- 16.3 **Disputes; Continuation of Work**
- 16.4 **Dispute Resolution; Arbitration**
- 16.5 **Capitalized Terms**
- 16.6 **Provisions Required by Law Deemed Inserted**
- 16.7 **Days**

**ARTICLE 17: MISCELLANEOUS**

- 17.1 **Governing Law**
- 17.2 **Marginal Headings; Interpretations**
- 17.3 **Successors and Assigns**
- 17.4 **Cumulative Rights and Remedies; No Waiver**
- 17.5 **Severability**
- 17.6 **No Assignment by Contractor**
- 17.7 **Gender and Number**
- 17.8 **Independent Contractor Status**
- 17.9 **Notices**
- 17.10 **Attorneys Fees**
- 17.11 **Entire Agreement**

**ARTICLE 18: CLAIMS SUBMISSION**

- 18.1 **Procedure**
- 18.2 **California False Claims Act Compliance**

**ARTICLE 19: RECORDS ACCESS**

- 19.1 **District's Right to Audit and Access to Contractor's Records**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, CA 94022  
Attention: Gina Bailey

This document is recorded for the  
benefit of the Foothill-De Anza  
Community College District, and  
recording is fee exempt under Section  
6103 of the Government Code.

---

**SITE LEASE**

FOOTHILL-DE ANZA EDUCATIONAL CENTER  
Sunnyvale, California

by and between

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT  
as Lessor

and

C. W. DRIVER  
as Lessee

Dated as of \_\_\_\_\_, 2013



## **SITE LEASE**

THIS SITE LEASE (this "Lease") dated as of \_\_\_\_\_, 2013 ("Effective Date"), is made and entered into by and between the FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT, a California community college district duly organized and validly existing under the Constitution and laws of said State of California, (the "District"), as lessor, and C. W. DRIVER ("Contractor"), a corporation duly organized and existing under the laws of the State of California, as lessee.

### **RECITALS**

WHEREAS, the District currently owns a parcel of land located at Sunnyvale, California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Site"), which Site is adequate to allow for demolition activities and to accommodate the construction of a new educational center building and adjacent parking lot and site improvements;

WHEREAS, the District desires to provide for the construction of a new educational center as more particularly described in Exhibit "A" to the Facilities Lease (defined below) and incorporated herein by this reference (the "Project");

WHEREAS, the Governing Board 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 Site to the Contractor and by immediately entering into the Facilities Lease (defined below) under which the District will sublease the Site and lease the Project from the Contractor;

WHEREAS, the District is authorized under Section 81335 of the Education Code of the State of California to lease the Site to the Contractor and to have the Contractor construct the Project on the Site and to lease to the District the Site and the Project, and has duly authorized the execution and delivery of this Lease;

WHEREAS, the Contractor is authorized to lease the Site as lessee and to conduct demolition activities on the site and to construct the Project on the Site, and has duly authorized the execution and delivery of this Site Lease; and

WHEREAS, the District has performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into this Site Lease 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;

**NOW, THEREFORE**, in consideration of the promises and of the mutual agreements and covenants contained herein, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Unless the context clearly otherwise requires, all words and phrases defined in Section 1.1 of the Facilities Lease dated as of \_\_\_\_, 2013 by and between the District and the Contractor (the "Facilities Lease") shall have the same meaning in this Site Lease.

## **ARTICLE II**

### **DEMISING CLAUSES**

Section 2.1. Lease of the Site. The District hereby leases to the Contractor, and the Contractor hereby leases from the District the Site, subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.

Section 2.2. Rental. In consideration for the lease of the Site by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) to the District per year.

Section 2.3. No Merger. The leasing of the Site by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Site, and the Contractor shall continue to have a leasehold estate in the Site pursuant to this Site Lease throughout the term hereof.

## **ARTICLE III**

### **QUIET ENJOYMENT**

Section 3.1. The parties intend that the Site will be sub-leased back to the District pursuant to the Facilities Lease for the term thereof. It is further intended that, to the extent provided herein and in the Facilities Lease, if an Event of Default occurs under the Facilities Lease, the Contractor, or its assignee, will have the right, for the then remaining term of this Site Lease, to: (a) take possession of the Site; (b) if it

deems it appropriate, cause appraisal of the Site and a study of the then reasonable use thereof to be undertaken; and (c) relet the Site. Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Site, the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Site during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.

## **ARTICLE IV**

### **SPECIAL COVENANTS AND PROVISIONS**

Section 4.1. Waste. The Contractor agrees that at all times that it is in possession of the Site, it will not commit, suffer or permit any waste on the Site, and that it will not willfully or knowingly use or permit the use of the Site for any illegal purpose or act.

Section 4.2. Further Assurances and Corrective Instruments. The District and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.

Section 4.3. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same.

Section 4.4. Representations of the District. The District represents and warrants to the Contractor as follows:

(a) Due Organization and Existence. The District is a community college district, duly organized and existing under the Constitution and laws of the State of California.

(b) Authorization. The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

(c) No Violations. Neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated

hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Site, except Permitted Encumbrances.

Section 4.5. Representations of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

(a) Due Organization and Existence. The Contractor is a corporation duly organized and existing under the General Corporation Law of the State of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) Authorization. The Contractor has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

(c) No Violations. Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Site, except Permitted Encumbrances.

## ARTICLE V

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.1. Assignment and Subleasing. This Site Lease may be assigned and the Site subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such sublease.

Section 5.2. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Site or any portion thereof during the term of this Site Lease.

Section 5.3. Liens. The Contractor agrees to keep the Site and every part thereof free and clear of any and all liens, including without limitation, pledges, charges, encumbrances, claims, materialmen liens, mechanic liens and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Site or the Project. Contractor further agrees to pay promptly and fully and discharge any and all claims on which any such lien may or could be based, and to save and hold the District free and harmless from any and all such liens, mortgages, including without limitation, claims of liens and suits or other proceedings pertaining thereto.

## **ARTICLE VI**

### **IMPROVEMENTS**

Section 6.1. Title to all improvements made on the Site during the term hereof shall vest subject to the terms of the Facilities Lease.

## **ARTICLE VII**

### **TERM AND TERMINATION**

Section 7.1. Term. The term of this Site Lease shall commence as of \_\_\_\_, 2013 and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all Lease Payments and other payments which may be due under the Facilities Lease, and provided this Site Lease has not terminated pursuant to Sections 4.3(a) or 4.3(c) of the Facilities Lease.

## **ARTICLE VIII**

### **MISCELLANEOUS**

Section 8.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the Contractor: C. W. Driver  
468 N. Rosemead Boulevard  
Pasadena, California 91107  
Attn: Dana Roberts, President

If to the District: Foothill-De Anza Community College District  
12345 El Monte Road  
Los Altos Hills, California 94022  
Attn: Gina Bailey, Purchasing Services  
WITH A COPY TO:

Foothill-De Anza Community College District  
1234 El Monte Road  
Los Altos Hills, California 94022  
Attn: Art Heinrich, Facilities Department

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 8.2. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

Section 8.3. Severability. In the event any provision of the Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.4. Amendments, Changes and Modifications. This Site Lease may not be effectively amended, changed, modified, altered or terminated without the written agreement of both parties hereto.

Section 8.5. Obligations Absolute. The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.

Section 8.6. Execution in Counterparts. This Site Lease may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 8.7. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8. Contractor and District Representatives. Whenever under the provisions of this Site Lease the approval of the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.9. Captions. The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

Section 8.10 Prior Agreements. This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Site Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 8.11 Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorney's fees.

Section 8.12. Construction of Lease. It is the intent of the parties that this Site Lease and the Facilities Lease, and all Exhibits incorporated therein, be construed and interpreted together to accomplish the goals of the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Site Lease to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

**"DISTRICT"**  
**FOOTHILL-DE ANZA COMMUNITY**  
**COLLEGE DISTRICT**

**"CONTRACTOR"**  
**C. W. DRIVER**

By: \_\_\_\_\_  
Gina Bailey  
Director, Purchasing Services

By: \_\_\_\_\_  
Dana Roberts  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT "A"**

### **DESCRIPTION of SITE**

#### **Site Plan**

The real property leased to the Contractor for construction of the Project is indicated on the attached Supplemental Plat of the Onizuka Air Force Station Tract prepared by the U.S. Bureau of Land Management, dated November 3, 2011.

#### **Demolition Phase Site**

During the Demolition Phase of the Project, the site consists of the District's Parcel C; parcels A and B, owned by the Veterans Administration (VA); and parcels D and E, owned by the City of Sunnyvale (City). The District has entered into a Memorandum of Agreement with the VA and a separate Memorandum of Agreement of Agreement with the City to provide for demolition activities on their parcels.

#### **Early Site Work and Building Construction Phase Site**

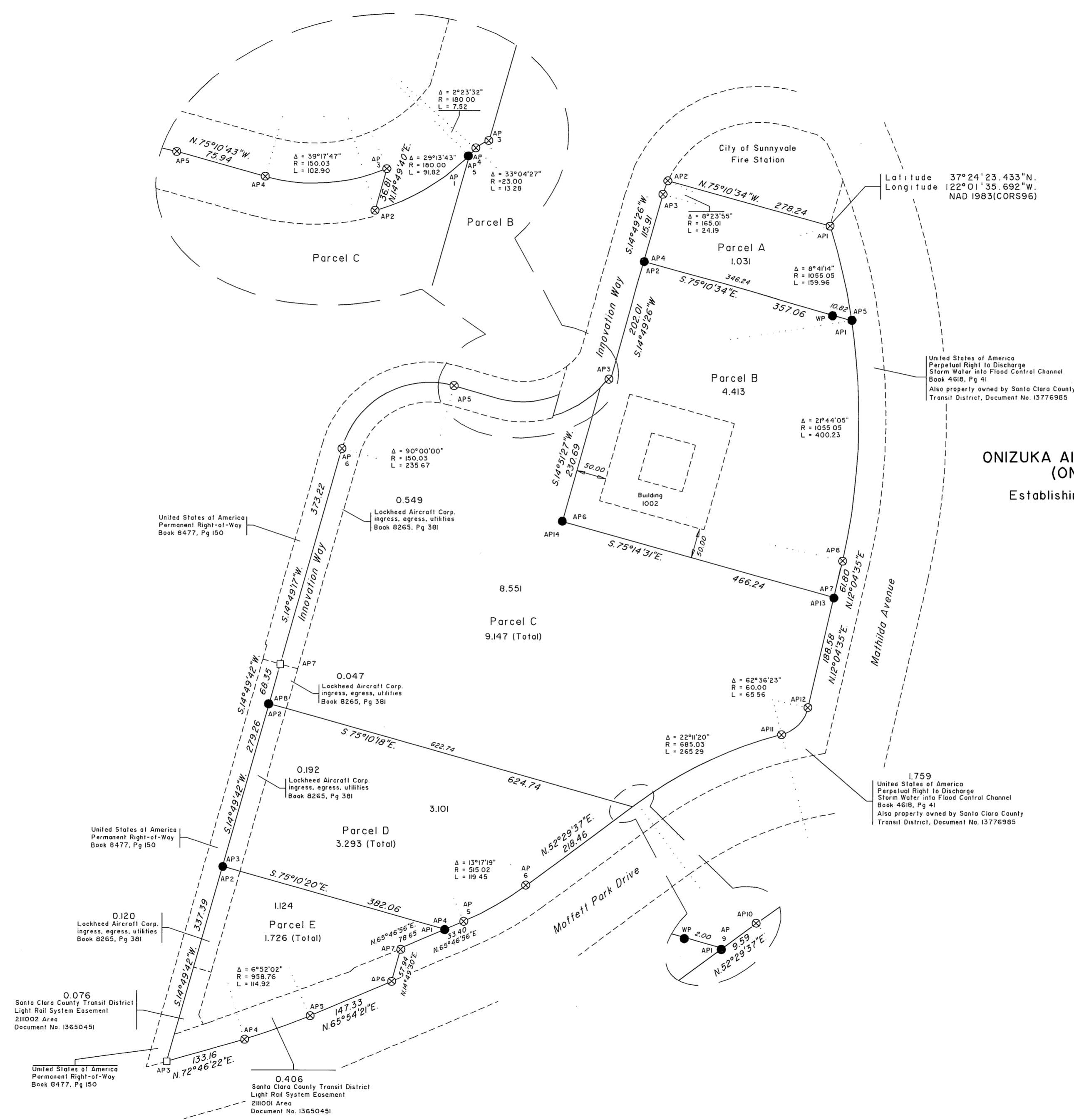
During the Early Site Work Phase and Site and the Building Construction Phase, the site consists of only Parcel C, owned by the District.

END OF EXHIBIT "A"



TOWNSHIP 6 SOUTH, RANGE 2 WEST, OF THE MOUNT DIABLO MERIDIAN, CALIFORNIA.

SUPPLEMENTAL PLAT



Latitude 37° 24' 23.433"N,  
Longitude 122° 01' 35.692"W,  
NAD 1983(CORS96)

United States of America  
Perpetual Right to Discharge  
Storm Water into Flood Control Channel  
Book 4618, Pg 41  
Also properly owned by Santa Clara County  
Transit District, Document No. 13776985

ONIZUKA AIR FORCE STATION TRACT  
(ONIZUKA TRACT)  
Establishing Parcels A, B, C, D, and E.

This supplemental plat showing easements for light rail and perimeter roadways relative to the Onizuka Air Force Station Tract, Township 6 South, Range 2 West, Mount Diablo Meridian, California, is based on a preliminary title report provided by the General Services Administration, (GSA), realty documents made available by Onizuka Air Force Station personnel, and the two plats accepted September 30, 2011 for Group No. 1637, California. The location of Mathilda Avenue and Moffett Park Drive is displayed for relative positioning to the Onizuka Air Force Station Tract. There is no guarantee as to the completeness of the easement documentation provided to us and depicted on this plat.

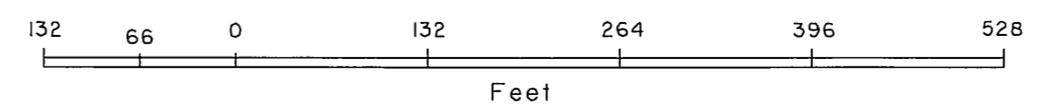
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Sacramento, California

This plat, having been correctly prepared in accordance with the requirements of law and this Bureau, is hereby accepted.

For the Director

*James G. [Signature]* November 3, 2011  
Chief Cadastral Surveyor-California

- LEGEND**
- Local Evidence Recovered; Not Remonumented
  - Position Determined and Monumented
  - ⊗ GLO/BLM Monument
  - Tract / Parcel
  - - - Easement



D. a. d.  
G. A.