BOARD OF EDUCATION
REGULAR MEETING
2309 TULARE STREET
BOARD ROOM, SECOND FLOOR
FRESNO, CA 93721-2287
board.fresnounified.org

AGENDA
SEPTEMBER 28, 2022
*4:45 P.M. (CLOSED SESSION) *6:15 P.M. (OPEN SESSION)

THIS MEETING WILL BE HELD AT 2309 TULARE STREET, BOARD ROOM, SECOND FLOOR, FRESNO, CALIFORNIA 93721

AND

BOARD MEMBER THOMAS WILL PARTICIPATE FROM THE FOLLOWING TELECONFERENCE LOCATION: INTERCONTINENTAL MIAMI, 100 CHOPIN PLAZA, MIAMI, FLORIDA 33131, BOARD ROOM, OPEN TO THE PUBLIC

PURSUANT TO GOVERNMENT CODE SECTION 54953 (B)(2), ALL ACTION TAKEN DURING THIS TELECONFERENCE MEETING SHALL BE BY ROLL CALL VOTE

PLEASE NOTE: WE ARE BACK TO IN-PERSON BOARD MEETINGS.
*DESIGNATED TIMES FOR CONFERENCE/DISCUSSION ITEMS ARE ESTIMATES.

PLEASE NOTE: PARKING WILL BE AVAILABLE FOR BOARD MEETINGS AFTER 5:00 P.M. AT THE "N" STREET PARKING PAVILION LOCATED ON THE SOUTHEAST CORNER OF TULARE AND "N" STREETS – ENTRANCE IS ON "N" STREET. Board meeting attendees without key cards should report to the parking booth to be scanned in by the attendant. Please do NOT pull a ticket. Also, the City of Fresno will not enforce the street meters in this area after 6:00 p.m., Monday through Friday.

Individuals who plan to attend the meeting in person must go through the COVID-19 Daily Self-Health Screening Tool the day of the board meeting and must answer "no" to all questions.

For the safety of all who attend Fresno Unified Board Meetings, everyone entering the Board of Education Room is subject to metal detector scanning. The use of metal detectors is approved under Board Policy 5145.12. The following items will not be permitted: alcohol, illegal drugs, knives, or firearms.

In compliance with the Americans with Disabilities Act, those requiring special assistance to access the Board meeting room, to access written documents being discussed at the Board meeting, or to otherwise participate at Board meetings, please contact the Board President or Board Office at 457-3727. Notification at least 48 hours prior to the meeting will enable the district to make reasonable arrangements to ensure accessibility to the

Board meeting and to provide any required accommodations, auxiliary aids, or services. Any member of the public who wishes to address the Board shall submit a speaker card specifying the item(s) they wish to address. The card must be submitted before the Board President announces the specific agenda item.

Public materials are available for public inspection at our website at: board.fresnounified.org

TRANSLATION SERVICES**:** Available in Spanish and Hmong in the meeting room upon request.

***4:45 P.M**.
CALL Meeting to Order
OPPORTUNITY for Public Comment on Closed Session Agenda Items
RECESS for Closed Session to discuss the following**:**

1. Student Expulsions Pursuant to Education Code Section 35146.
2. Conference with Labor Negotiator - (Government Code Section 54957.6); FUSD Negotiator(s): David Chavez and Paul Idsvoog; Employee Organizations(s): FTA, CSEA, Chapter 125, CSEA, Chapter 143, SEIU, Local 521, FASTA/SEIU, Local 521/CTW, CLC, Fresno Unified Building & Construction Trades/FTA; International Association of Machinists and Aerospace Workers (IAMAW), Unrepresented Employees: All Management, Confidential, and Supervisory Employees.
3. Public Employee Discipline/Dismissal/Release/Reassignment/Resignation.
4. Public Employment/Appointment - (Government Code Section 54957).
    a. Executive Director
    b. Principal
5. Conference with Legal Counsel - Existing Litigation - (Government Code Section 54956.9(d)(1)).
    a. Potential Case (One)
6. Conference with Legal Counsel – Anticipated/Pending/Threatened Litigation (Government Code Section 54956.9(d)(2)).
    a. OAH Case No. 2022040896

***6:15 P.M., RECONVENE** and report action taken during Closed Session, if any.

PLEDGE OF ALLEGIANCE
Wendy McCulley will lead the flag salute.

HEAR Reports from Student Board Representatives
An opportunity is provided to hear comments/reports from Student Board Representatives from Edison High School. Contact person: Dr. Natasha Baker, telephone 457-3731.

HEAR Report from Superintendent

OPPORTUNITY for Public Comment on Consent Agenda Items

ALL CONSENT AGENDA items are considered routine by the Board of Education and will be enacted by one motion. There will be no separate discussion of items unless a Board member so requests, in which event, the item(s) will be considered following approval of the Consent Agenda.

A. CONSENT AGENDA

A-1, APPROVE Personnel List

Included in the Board binders is the Personnel List, Appendix A, as submitted. The Superintendent recommends approval. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: David Chavez, telephone 457-3548.

A-2, ADOPT Findings of Fact and Recommendations of District Administrative Board

The Board of Education received and considered the Findings of Fact and Recommendations of District Administrative Panels resulting from hearings on expulsion and readmittance cases conducted during the period since the September 14, 2022, Regular Board Meeting. The Superintendent recommends adoption. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: Dr. Natasha Baker, telephone 457-3731.

A-3, APPROVE Minutes from Prior Meetings

Included in the Board binders are the draft minutes for the September 07, 2022, Board Workshop and the September 14, 2022, Regular Board Meeting. The Superintendent recommends approval. Fiscal impact: There is no fiscal impact to the district. Contact person: Dr. Robert G. Nelson, telephone 457-3884.

A-4, ADOPT Resolution 23-06, Recognizing Hispanic Heritage Month

Included in the Board binders is resolution 23-06 commemorating the observance of Hispanic Heritage Month. National Hispanic Heritage Month is an opportunity to recognize the contributions made by Hispanic and Latino Americans to the United States and celebrate their heritage and culture. Hispanics have had a profound and positive influence on our country through their strong commitment to family, faith, hard work, and service. Fresno Unified School District hereby proclaims September 15, 2022, through October 15, 2022, as Hispanic Heritage Month. The Superintendent recommends adoption. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: Ambra O'Connor, telephone 457-3838.

A. CONSENT AGENDA - continued

A-5, ADOPT Variable Term Waiver for Bilingual Cross-Cultural, Language and Development Authorization

Included for Board consideration and adoption are Variable Term Waiver requests for Bilingual Cross-Cultural Language and Development (BCLAD) Authorization which will be needed to teach dual immersion until credential program is completed to be BCLAD authorized. The Superintendent recommends adoption. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: David Chavez, telephone 457-3548.

A-6, ADOPT Resolution 23-03, Authorizing the California Energy Commission's California Schools Healthy Air, Plumbing, and Efficiency Program for the Acceptance of Grant Award and Entering into Grant Agreement

Included in the Board binders for consideration and adoption is Resolution 23-03 for the California Energy Commission's (CEC) California Schools Healthy Air, Plumbing, and Efficiency Program Governing Body Resolution. The resolution authorizes the acceptance of a grant award, and entering into a grant agreement for awarded program funds. Fresno Unified School District has received a Notice of Proposed Award from the CEC Round 2 funding for a School Plumbing Fixture and Appliance Replacement Grant totaling $357,174. The Superintendent recommends adoption. Fiscal impact: The program funds the purchase of new commercial appliances. Minor costs for electrical or plumbing improvements may be necessary for the installation of the new appliances. Contact person: Paul Idsvoog, telephone 457-3134.

A-7, ADOPT Resolution 23-04, Resolution Declaring Property Located at 2526 East Hedges Avenue as Surplus, Determining a Notice of Exemption, Approving Offers to Certain Public Agencies and Other Related Matters

Included in the Board binders and recommended for adoption is Resolution 23-04, to declare the property located at 2526 East Hedges Avenue as surplus, determining a notice of exemption, approving offers to certain public agencies and other related matters. The Superintendent recommends adoption. Fiscal impact: Adoption of Resolution 23-04 has no immediate or direct financial impact, but the district will realize the sale proceeds when the property is ultimately sold. Contact person: Paul Idsvoog, telephone 457-3134.

A-8, APPROVE Revised Certificated Management Daily Salary Schedules 215 Duty Days

Included for the Board's consideration and approval are the revised Certificated Management Daily Salary Schedules 215 Duty Days. The Superintendent recommends approval. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: David Chavez, telephone 457-3548.

A. CONSENT AGENDA - continued

A-9, APPROVE Revised Classified Management Daily Salary Schedule 261 Duty Days

Included for the Board's consideration and approval is the revised Classified Management Daily Salary Schedule 261 Duty Days. The Superintendent recommends approval. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: David Chavez, telephone 457-3548.

A-10, APPROVE Provisional Internship Permits

Included in the Board binders are Provisional Internship Permit recommendations to rehire or hire upon Board approval. Site principals recommended to Human Resources to retain or hire the teachers in their positions of 2022/23 due to a shortage of fully credentialed teachers. They are all working toward completing the required exams by the end of 2022/23. The Superintendent recommends approval. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: David Chavez, telephone 457-3548.

A-11, APPROVE Credentialed Teachers to Coach One Period of Competitive Sport for Physical Education Credit for the 2022/23 School Year per California Education Code 44258.7(b)

Included in the Board binders is a request to approve credentialed teachers to coach one period of competitive sport for physical education credit. Pursuant to California Education Code 44258.7(b) teachers who hold a teaching credential in a subject or subjects other than physical education may be authorized to coach one period per day in a competitive sport for which students receive physical education credit. The teacher must be a full-time employee of the school district and has completed a minimum of 20 hours of first aid instruction appropriate for the specific sport. The Superintendent recommends approval. Fiscal impact: Sufficient funds are available in the sites' budgets. Contact person: David Chavez, telephone 457-3548.

A-12, APPROVE Appointment to the California School Boards Association's Delegate Assembly

Included in the Board binders is information pertaining to appointment to the California School Boards Association's (CSBA) Delegate Assembly. Each year member boards elect and/or appoint representatives to CSBA's Delegate Assembly. According to CSBA's Bylaws and Standing Rules, districts with an ADA of 30,000 or above, qualify to appoint or reappoint representative(s) from their board to the CSBA's Delegate Assembly for a two-year term ending March 31, 2024. One appointed delegate vacancy currently exists for Fresno Unified. The Board President recommends approval. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: Ambra O'Connor, telephone 457-3838.

A. CONSENT AGENDA - continued

A-13, APPROVE Agreement with M Street Art Gallery

Included in the board binders is an agreement with M Street Art Gallery. M Street Art Gallery is a premiere fine art gallery in downtown Fresno. The public exhibition will showcase curated art from students in all seven regions of the school district as part of the Relevant Engagement through Art and Literacy (REAL) collaborative. The REAL Collaborative supports teachers and students from grades transitional kindergarten through twelve to provide age-appropriate discussion and research through art and literature within a year-long overarching theme. We have successfully acquired a lease for five small galleries. The gallery will be open starting October 06, 2022, for Art Hop. The Superintendent recommends approval. Fiscal impact: Sufficient funds in the amount of $26,955 are available in the Arts Education Department budget. Contact person: Dr. Natasha Baker, telephone 457-3731.

A-14, APPROVE Agreement with The Law Office of Mark T. Harris

Included in the Board binders is an agreement with the Law Office of Mark T. Harris to provide an independent assessment of matters which arise from within the district pertaining to race; ethnicity; national origin; gender; and sexual orientation involving employees and students. Mr. Harris will work in collaboration with the district's current team of attorneys and investigators, in the crafting of litigation strategy and employee discipline where warranted. The Superintendent recommends approval. Sufficient funds in the amount of $210,000 are available in the Equity & Access budget. Contact person: Ambra O'Connor, telephone 457-3838.

A-15, APPROVE Agreement with Leadership Associates

Included in the Board binders for consideration and approval is an Agreement with Leadership Associates to conduct an executive search for the position of Chief Equity and Access. The Superintendent recommends approval. Sufficient funds in the amount of $22,500 are available in the Human Resources budget. Contact person: David Chavez, telephone 457-3548.

A-16, APPROVE Award of Request for Proposal 22-07, Cleaning Supplies, Equipment and Custodial Related Products, Services and Solutions

Included in the Board binders is information on Request for Proposal 22-07, for district-wide cleaning supplies, and equipment and custodial related products, services and solutions. This is a three-year contract commencing November 01, 2022. The evaluation panel recommend approval of the following best value vendor: HD Supply Facilities Maintenance Ltd. Formally known as (fka) Home Depot Pro Institutional (Atlanta, Georgia) est. $1,500,000. The Superintendent recommends approval. Fiscal impact: Sufficient funds in the amount of $1,500,000 are available in the Maintenance and Operations Fund. Contact person: Paul Idsvoog, telephone 457-3134.

A. CONSENT AGENDA - continued

A-17, APPROVE Use of Individual Piggyback Contracts

Included in the Board binders and recommended for approval is a list of five piggyback contracts for use during 2022/23 for efficient and cost-effective procurement. This is in addition to piggyback contracts approved by the Board previously, to allow for expedited purchases related to Personal Protective Equipment and supplies, Heating Ventilation and Air Conditioning equipment, playground flooring and a districtwide website hosting service. Use of piggyback contracts is allowed under Public Contract Codes 10299 and 20118 and is a procurement best practice that takes advantage of competitive pricing from a contract formally bid by another school district or public agency. The Superintendent recommends approval. Fiscal impact: Estimated annual expenditures for each piggyback contract (if utilized) are indicated on the backup material; funding will be determined on a project-by-project basis. Contact person: Paul Idsvoog, telephone 457-3134.

A-18, RATIFY Change Orders

Included in the Board binders is information on Change Orders for the following projects:

Bid 21-38, Centennial and Wishon Elementary Schools and Scandinavian Middle School Multipurpose Room HVAC Upgrades

Change Order 2 (Centennial) presented for ratification $ - 1,225

Bid 21-42 Section A, Bullard High School Athletic Field Improvements
Change Order 7 presented for ratification $0

The Superintendent recommends ratification. Fiscal impact: $1,225 will be credited to the Measure X Fund for Bid 21-38. Contact person: Paul Idsvoog, telephone 457-3134.

A-19, RATIFY the Filing of a Notice of Completion

Included in the Board binders is a Notice of Completion for the following project, which has been completed according to plans and specifications.

Bid 21-42 Section A, Bullard High School Athletic Field Improvements

The Superintendent recommends ratification. Fiscal impact: Retention funds are released in accordance with contract terms and California statutes. Contact person: Paul Idsvoog, telephone 457-3134.

END OF CONSENT AGENDA
(ROLL CALL VOTE)

B. CONFERENCE/DISCUSSION AGENDA

***6:30 P.M.**

B-20, HOLD a Public Hearing and ADOPT Resolution in the Matter of Sufficiency of Instructional Materials

Included in the Board binders is a request to adopt the Resolution in the Matter of Sufficiency of Instructional Materials. The Superintendent recommends adoption. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: Dr. Natasha Baker, telephone 457-3731.

***6:40 P.M.**

B-21, PRESENT and DISCUSS Summer 2022 Programming

Staff will present to the Board of Education an update regarding the offerings and outcomes of programs offered to students during Summer of 2022. During June of 2022, all available elementary, middle, and high schools operated Summer Academies resulting in over 31,000 students attending. Fiscal impact: There is no fiscal impact to the district at this time. Contact person: Dr. Natasha Baker, telephone 457-3731.

***6:55 P.M.**

B-22, OPPORTUNITY for Public DISCLOSURE and RATIFICATION of the 2022/2023 Negotiated Collective Bargaining Agreement between Fresno Unified School District and California School Employees Association, Chapter 143

In accordance with Government Code 3547.5, all major provisions of collective bargaining agreements are to be presented at a public meeting of the public-school employer before the employer enters into written agreement with an exclusive representative. Included in the Board binders is a copy of the Tentative Agreement between Fresno Unified School District and California School Employees Association, Chapter 143. The Superintendent recommends ratification. Fiscal impact: The estimated cost is included in the Disclosure Agreement. Contact person: Paul Idsvoog, telephone 457-3134.

C. RECEIVE INFORMATION & REPORTS

There are no items for this section of the agenda.

UNSCHEDULED ORAL COMMUNICATIONS

Individuals who wish to address the Board on topics within the Board's subject matter jurisdiction, but **not** listed on this agenda may do so at this time. If you wish to address the Board on a specific item that is listed on the agenda, you should do so when that specific item is called. Individuals shall submit a speaker card specifying the topic they wish to address. The card must be submitted before the Board President announces unscheduled oral communications.

While time limitations are at the discretion of the Board President, generally members of the public will be limited to a maximum of three (3) minutes per speaker for a total of thirty (30) minutes of public comment as designated on this agenda. The Board recognizes that individuals may ask the Board to answer questions or respond to statements made during unscheduled oral communications and in accordance with Board Bylaw 9323, the Board shall take no action or discussion on any item not appearing on the posted agenda, except as authorized by law.

Members of the public with questions on school district issues may submit them in writing. The Board will automatically refer to the Superintendent any formal requests that are brought before them at this time. The appropriate staff member will furnish answers to questions.

D. ADJOURNMENT

NEXT SCHEDULED REGULAR MEETING
WEDNESDAY, OCTOBER 12, 2022

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-1

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Personnel List

ITEM DESCRIPTION: Included in the Board binders is the Personnel List, Appendix A, as submitted.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez,
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

BOARD OF EDUCATION APPENDIX A 1

A-1

Fresno Unified School District

Revised 9/27/2022

Date: September 28, 2022

The Superintendent respectfully nominates for elections the following certificated and classified personnel. Classification of certificated probationary or temporary teachers is pursuant to their respective classification contained in their employment contracts. Elections are subject to the salary schedule as adopted by the Board of Education and assignment by the Superintendent, school year 2022-2023.

ELECTIONS

Certificated Personnel

1081794	Anton	Nicholas	Teacher, Lrng Hndcp, Sdc	Hoover High School	8/24/2022
1066041	Castro	Alejandra	Teacher, Autistic, Sdc	Heaton Elementary	8/15/2022
1081835	Chapman	Linda	Teacher, Deaf/Hard of Hearing	Special Ed	9/1/2022
1005664	Chronister-Avoledo	Melanie	Tutor	Viking Elementary	8/15/2022
1081653	Fleming	Sofia	Coach, Literacy	Teacher Development	8/10/2022
1068812	Flores	Angelica	Coach, Literacy	Ayer Elementary	8/10/2022
1012077	Gilbert	Tama	Tutor	Kirk Elementary	9/12/2022
1081041	Her	Tommy	Teacher, Senior High	Mclane High School	8/22/2022
1075898	Quinata	Shariah	Teacher, Autistic, Sdc	Greenberg Elementary	8/16/2022
1081837	Truong	Linh	Nurse	Health Services	8/26/2022
1064190	Villalvazo	Mark	Teacher, Middle School	Fort Miller Middle School	8/16/2022
1048370	Wren	Andrew	Teacher, Handicapped, Severely	Roosevelt High School	9/6/2022
1045852	Yang	Pa	Teacher, Child Dvlpmt Ctr	Childrens' Center	8/29/2022

Classified Personnel

1075878	Baltazar	Karina	Assistant, School Office	Winchell Elementary	8/25/2022
1080009	Banuelos	Sylvia	Paraprof, Moderate/Severe	Pyle Elementary	8/23/2022
1081810	Buie	Shyann	Paraprof, Moderate/Severe	Ewing Elementary	9/6/2022
1081808	Chang	Mai	Accountant II	Payroll Department	9/6/2022
1079616	Jackson	Angela	Paraeducator, Soc Emot Intv	Fulton School	9/1/2022
1081860	Johannes	Jade	Trustee Area Liaison	Board Of Education	9/12/2022
1081809	Lopez	Michelle	Paraprof, Early Chldhd Mil/Mod	Greenberg Elementary	9/6/2022
1080645	Lopez	Victor	Paraprof, Moderate/Severe	Hoover High School	9/1/2022
1077630	Medrano	Saida	Nutrition Services Assistant	Food Services	9/1/2022
1074925	Moya	Genesis	Paraprof, Early Chldhd Mil/Mod	Delmar Elementary	9/6/2022
1081703	Ochoa	Alyssa	Paraprof, Moderate/Severe	Anthony Elementary	8/31/2022
1046384	Olivas	Tania	Paraprof, Moderate/Severe	Pyle Elementary	8/23/2022
1066601	Oram	Madison	Paraprof, Mild/Moderate	Cooper Middle School	9/7/2022
1081875	Ortega Cordero	Susan	Specialist, Chd Wel & Attnd II	Prevention And Intervention	9/12/2022
1078386	Puri	Davinder	Nutrition Services Assistant	Food Services	8/31/2022
1080101	Quintero	Leidy	Nutrition Services Assistant	Food Services	9/1/2022
1077808	Sanchez Arellano	Elizabeth	Paraprof, Child Development Bilingual	Juan F Herrera Elementary	8/30/2022
1079841	Tapia Ramirez	Morelia	Paraprof, Mild/Moderate	Lincoln Elementary	8/31/2022
1079837	Vang	Mouakong	Paraprof, Instructional Asst	Wishon Elementary	8/31/2022
1076063	Young Jr	Lawrence	Paraprof, Moderate/Severe	Mclane High School	8/30/2022

Management Classified

1081886	Morales	Nichole	Manager, Project (General)	Special Educ Administration	9/26/2022
1081848	Washington	Jamaal	Manager, Project (General)	African American Academic Acce	9/12/2022

RESIGNATIONS OR RETIREMENTS

Certificated Personnel

1081794	Anton	Nicholas	Teacher, Lrng Hndcp, Sdc	Hoover High School	8/26/2022
1074120	Estrada-Rios	Catherine	Teacher, Elementary	Addams Elementary	8/19/2022
1081653	Fleming	Sofia	Coach, Literacy	Teacher Development	8/10/2022
1031835	Krbechek	Karen	Teacher, Elementary	Vinland Elementary School	8/31/2022
1046503	Murillo	Amelia	Teacher, Elementary	Thomas Elementary	10/14/2022
1071647	Persons	Anthony	Teacher, Deaf/Hard of Hearing	Special Ed	9/2/2022
1069382	Poveamaciel	Jessica	Nurse	Health Services	9/2/2022
1008581	Riley	Cindy	Coach, Literacy	Wawona Middle School	8/8/2022
1006426	Sarafian	Jackie	Teacher, Middle School	Bullard Talent 7-8	9/30/2022
1045852	Yang	Pa	Teacher, Child Dvlpmt Ctr	Childrens' Center	8/26/2022

Classified Personnel

1075212	Dorado	Lorraine	Assistant, Noontime	Vinland Elementary School	2/22/2022
1032968	Gonzalez	Ruth	Paraeducator, Autism	Starr Elementary	9/30/2022
1008081	Haynes	Michael	Assistant, Campus Safety	Ahwahnee Middle School	9/23/2022
1079489	Juarez	Kevin	Assistant, Noontime	Storey Elementary	8/24/2022
1010820	Lopez	Mary	Nutrition Services Operator	Food Services	9/19/2022
1075735	Men	Pissey	Paraprof, Instructional Asst	Ericson Elementary	8/31/2022
1071355	Navarro	Alma	Paraprof, Mild/Moderate	Jefferson Elementary	7/31/2022
1068947	Orozco	Eric	Custodian, PE Male/Female	Edison High School	8/5/2022
1010556	Ortiz	Carolina	Supervisor, School Food Serv	Packaging Center	12/8/2022
1003754	Perry	Stanley	Assistant, Campus Safety	Cesar Chavez Adult School	9/3/2022
1069390	Ramos	Jennifer	Assistant, Noontime	Bullard Talent 7-8	10/14/2022
1032551	Ricardo	Patricia	Assistant, Office III	Food Services	10/28/2022
1079994	Velasquez-Lopez	Esmeralda	Assistant, Attendance Records	eLearn Academy	6/13/2022
1081020	Vick	Myranda	Nurse, Vocational License	Health Services	8/19/2022
1080580	Villa	Austin	Assistant, Noontime	Kratt Elementary	6/10/2022
1079448	Wancewicz	Elena	Assistant, Noontime	Robinson Elementary	6/10/2022
1048370	Wren	Andrew	Teacher, Handicapped, Severely	Roosevelt High School	9/5/2022
1068094	Yanez	Monserrat	Paraeducator, Autism	Anthony Elementary	8/25/2022

Management Classified

1081027	Meza	Ralph M.	Director, Transportation	Transportation	9/20/2022
1068965	Mouanoutoua	Jane	Analyst II, Accounting/Payroll	Payroll Department	9/16/2022
1025122	Nixon	Thomas	Manager II, General	Instructional Services	6/30/2023
1031775	Quinto	John	Manager, Business Operations	Transportation	8/31/2022

LEAVE REQUEST

Certificated Personnel

1065686	Carter Segler	Atalina	Teacher, Vocational Education	Sunnyside High School	8/15/2022
1076081	Maldonado	Celia	Teacher, Bilingual	Centennial Elementary	11/7/2022

Classified Personnel

1066951	Vue	Yer	Specialist, Chd Wel & Attnd II	Prevention And Intervention	9/18/2022

PROMOTIONS

Classified Personnel

1078223	Camacho	Lilia	Assistant, School Office	Centennial Elementary	8/29/2022
1043455	Covarrubias	Gloria	Paraprof, Moderate/Severe	Anthony Elementary	8/30/2022
1076341	Delgado	Jocelyn	Paraprof, Child Development	Juan F Herrera Elementary	9/12/2022
1069642	Gutierrez	Daniel	Lead, After Schl/Ext Day	Yosemite Middle School	9/14/2022
1070272	Hernandez	Cynthia	Dispatcher, Maintenance	Plant Operations	9/8/2022
1070551	Holmes	Kelce	Assistant, School Office	Turner Elementary School	9/14/2022
1071614	Lee	Gee	Paraeducator, Autism	Ericson Elementary	9/1/2022
1039669	Lopez-Deceballos	Gloria	Nutrition Services Assistant	Food Services	8/24/2022
1017200	Mendez	Leticia	Manager, School Office Elementary	Storey Elementary	9/6/2022
1076010	Mendoza	Shayla	Technician, Budget II	Summer School	9/12/2022
1071947	Pena Lopez	Maria Del Rosar	Secretary II	Career Education	9/12/2022
1068015	Rodriguez	Christina	Assistant, School Program	Sunnyside High School	9/1/2022
1047943	Salazar	Marisol	Paraeducator, Soc Emot Intv	Fulton School	9/6/2022
1066582	Tellez-Lumbert	Magedella	Assistant, Attendance Records	Bullard High School	9/6/2022
1050822	Velazquez	Saul	Liaison, Home/School Spanish	Jefferson Elementary	9/2/2022
1070044	Zaragoza	Kimberly	Assistant, School Office	Kings Canyon Middle School	9/2/2022

Management Classified

1068038	Scott	Christopher	Manager, Business Operations	Food Services	9/6/2022

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-3

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Minutes from Prior Meeting

ITEM DESCRIPTION: Included in the Board binders are draft minutes for the September 07, 2022, Board Workshop and the September 14, 2022, Regular Board Meeting.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Ambra O'Connor,
Chief of Staff

DIVISION: Superintendent's Office
PHONE NUMBER: (559) 457-3838

CABINET APPROVAL: Ambra O'Connor,
Chief of Staff

SUPERINTENDENT APPROVAL:

BOARD OF EDUCATION
REGULAR MEETING
2309 TULARE STREET
BOARD ROOM, 2nd FLOOR
FRESNO, CA 93721
board.fresnounified.org

MINUTES – BOARD OF EDUCATION BOARD WORKSHOP

Fresno, California
September 07, 2022
Fresno Unified School District, Education Center, 2309 Tulare Street, Fresno, CA 93721.

At a Board Workshop of the Board of Education of Fresno Unified School District, held on September 07, 2022, there were present Board Members Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and Board President Jonasson Rosas. Superintendent Dr. Nelson was also present.

Board President Jonasson Rosas CONVENED the Board Workshop to Closed Session at 4:34 p.m.

OPPORTUNITY for Public Comment on Closed Session Items

For the record, the Board received zero requests to address the Board on Closed Session items.

For the record, Closed Session was extended to 5:15 p.m.

For the record, Closed Session was extended to 5:25 p.m.

Board President Jonasson Rosas RECONVENED the meeting to Open Session at 5:30 p.m.

Reporting Out of Closed Session

For the record there were no items to report.

PLEDGE OF ALLEGIANCE

Ambra O'Connor led the Flag Salute.

OPPORTUNITY for Public Comment on Consent Agenda Items

For the record, the Board received zero requests to address the Board.

BOARD WORKSHOP AGENDA ITEM

1. Present and Discuss the Academic History and Current Academic Status of the Fresno Unified School District.

Staff presented the academic history and academic status of the Fresno Unified School District. Discussions included how cohesive services can support all students, school sites, and staff districtwide. Staff discussed the vision and strategies to leverage disaggregated data by individual students for more informed data-driven decisions by staff that assist with driving academic acceleration and midcourse corrections to better meet the differentiated needs of all student groups. The discussion was designed to inform the Board of the necessary systems work being done to improve academic outcomes for students, some of which may require future Board action.

For the record, Board Members had comments/questions pertaining to the presentation. A summary is as follows: Requested data be provided showing Fresno Unified compared to Albuquerque, Tucson, El Paso, and Oklahoma City. Requested to see data showing years a student is behind. Requested to see data showing the number of incomplete Individualized Educational Programs (IEPs) compared to Central, Clovis, Sanger, San Diego, and Long Beach Unified School Districts. Commented, Fresno Unified has a lower number of IEPs than neighboring districts. Asked if Fresno Unified will look to encourage parents to move from 504 Plans to IEPs. Requested clarity as to how graduation statistics will be impacted by Assembly Bill 104 (AB104). Requested clarity as to how many other statistics shared in the presentation could be impacted by AB 104. Commented, Clovis Unified has a robust retention program of second and third grade students which are behind in reading and asked if Fresno Unified will do the same. Superintendent Dr. Nelson, Dr. Baker, Dr. Pinheiro, and Heather Allen were available to provide clarity.

Requested clarity as to when SBAC assessment results will be released. Commented on chronic absenteeism and noted spikes in the system, additionally noted areas of success pertaining to absenteeism and asked what the district is learning from these sites and how to replicate across the system. Commented on a negative outlier represented in EL redesignation data and asked if staff knew the cause. Requested clarity as to why many sites had results of zero point zero. Instructional Superintendents Gomes and Toscano along with Heather Allen were available to provide clarity.

Requested clarity as to what the district is doing to inform parents of A-G requirements. What is the plan to inform parents and recruit students? Requested the projected date of when IEPs will be completed. Requested clarity as to what Long Beach Unified, a district with similar demographics, is doing that Fresno Unified can align to, to do better. Discussion regarding the percentage of students on an IEP compared to other cities. Recognized Fresno has a high level of disadvantaged students. Requested clarity as to how many students in special

education take Career Technical Education classes.

Requested clarity as to what is happening with attendance. Data is good, how can we make it systematic. Referenced the process Sunnyside High School uses to track A-G requirements for students and parents. How best to strategize, that which gets measured gets results. Commented, earnest conversations needed to be held with parents pertaining to what a student needs to succeed.

Commented that great gains were made, and strategies were in place pre-COVID and students are trying hard to get back to where they were before COVID. Commented the district needs to make sure tools in class are being used to reteach students. Commented the district needs to find out how to make data easily accessible for teachers and principals so they can make changes to how they teach. How to make the data accessible to avoid teachers spending valuable time data mining. Commented on the block group structure at Computech and the benefits of the structure. Requested more information on the assessment tools mentioned in the presentation, specifically IDIBLE. Thanked Hoover staff for IEP work they completed. What strategies did Hoover use to address IEP deficit and what strategies can be used moving ahead? Echoed concerns of zero percent of English Learners being reclassified, requested concrete reasons to be provided.

Commented on bright spots within the presentation, specifically, African American graduation at McLane and Roosevelt. Commented on extrapolating what supports, and engagements were in place at those sites to achieve that level of success. Commented that words matter, referenced the district value of positive behavior, and pointed out there are connotations to what positive behavior is and what is valued as positive behavior in some instances in other instances will be discredited. Would like the district to carefully articulate what we want to see is learning, achievement and acceleration, the effort of trying. Commented on absenteeism and being careful on its negative connotation, if elementary students are staying home due to COVID exposure or symptoms then that is a positive behavior. Commented, when referring to equity-- to her it means the right tools to get to the right issues to solve problems, its not about giving everyone a pair of shoes but giving everyone a pair of shoes that fit, the right resources in very dedicated ways. Commented on credentialed teachers and that often the limit to expanding a program that is working is a lack of the right workforce; feels this is an area the district should aggressively address. Commented on accountability and referenced suspension and expulsion and the need to figure out and address, this is about systems that aren't working, why are trends up ticking, the district to be inquisitive on how a student gets on a suspension or expulsion list.

Requested literacy data be provided of students that attended PreK compared to those that did not. Commented on importance of moving supports now to have things in place for students. Requested to see iReady data or SBAC preliminary data to gage if the district is on right trajectory. Requested additional support be provided to help sites get caught up on IEPs, does not want to go into next school

year would like supports to students as soon as possible. Requested that when presented with data on K-8 schools, the elementary be presented with elementary and middle with middle. Requested clarity as to if the district expected to see a jump in reclassification of EL students. Asked if Dual Immersion program effects reclassification. Requested percentages be included in special education data presented. Commented data is erratic, no clear story, has any regression analysis or correlation work been done? Asked how a school with 44% absenteeism is doing better in mathematics. Commented that from a data perspective when looking at the data for the Roosevelt Region all the principals have changed except for one. Asked which one is doing the best and what is the correlation. Relationship between new principals or strong leadership at the sites may be impacting data. Suggested weekly or daily notes home may be helpful to parents. Asked what the district is doing with the data presented today once the story is figured out.

OPPORTUNITY FOR UNSCHEDULED ORAL COMMUNICATIONS

For the record, the Board received three (3) requests to address the Board during Unscheduled Oral Communications. The individual's name along with a summary of topic is listed as follows:

1. Mia Pacheco: Thanked Trustee Thomas for visiting her school. Requested her soccer team be allowed to practice at a school site due to safety concerns. Presented Misty Her with orchids.
2. Marycella Pacheco: Commented on information presented and shared parents need to know and listen. Commented, teachers need to be told its okay to give parents bad news. Asked how parents can review proposed curriculum before it is taught.
3. Monica Harrison Snowden: Shared she wanted to address a few issues: 1) Son did not get a Valley Championship Ring for 2009 Edison Basketball. Student athletes should be compensated for what they bring to the district via Title XI. 2) Equity--students should be compensated via college scholarships for their academic accolades within the district. Asked the district to recruit locally.

D. ADJOURNMENT

Board President Jonasson Rosas ADJOURNED the workshop at 8:00 p.m.

BOARD OF EDUCATION
REGULAR MEETING
2309 TULARE STREET
BOARD ROOM, 2nd FLOOR
FRESNO, CA 93721
board.fresnounified.org

MINUTES – BOARD OF EDUCATION REGULAR MEETING

Fresno, California
September 14, 2022
Fresno Unified School District, Education Center, 2309 Tulare Street, Fresno, CA 93721.

At a Regular Meeting of the Board of Education of Fresno Unified School District, held on September 14, 2022, there were present Board Members Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and Board President Jonasson Rosas. Superintendent Dr. Nelson was also present.

Board President Jonasson Rosas CONVENED the Regular Board Meeting to Closed Session at 4:30 p.m.

OPPORTUNITY for Public Comment on Closed Session Items

For the record, the Board received zero requests to address the Board on Closed Session items.

For the record, Closed Session was extended to 6:10 p.m.

Board President Jonasson Rosas RECONVENED the meeting to Open Session at 6:17 p.m.

Reporting Out of Closed Session

- On a motion by Board Member Cazares, seconded by Board Member Thomas, the Board acted in Closed Session to promote May Her to Principal II at Wolters Elementary, by a vote of 7-0-0-0 as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas and Board President Jonasson Rosas.

PLEDGE OF ALLEGIANCE

Dr. Natasha Baker led the Flag Salute.

HEAR Reports from Student Board Representatives

The Board recognized student board members and alternates for the 2022/23 school year and heard comments/reports from Student Board Representatives from Hoover High School.

HEAR Report from Superintendent

- Superintendent recognized the hoax active shooter report earlier this afternoon at Bullard High School. An external phone call was made to the Fresno Police Department shortly afternoon 12:00 p.m. today reporting an active shooter at Bullard High School – the caller didn't identify themselves and did not answer the phone when Fresno Police Department tried to call them back. Fresno Police Department responded immediately to Bullard as did our Safety and Emergency Response team and the school was put on lockdown. Gibson was also placed on lockdown as a precaution. Fresno Police Department was able to quickly ascertain there was no active shooter and posted to social media and contacted local media around 12:30pm to share that information, our team immediately reposted that information. Even though there was no imminent threat of activity on campus, Fresno Police Department completed their sweep of Bullard, going classroom to classroom to ensure the entire campus was safe before lifting the lockdown by 1pm. Parents received messaging from the school when lockdown was initiated and when the lockdown was lifted. We're so grateful for Fresno Police Department's quick and courageous response – there was no hesitation on the behalf of officers to get on campus and protect our students and staff. We're also incredibly relieved that this was a fake report and there was no actual danger to our campus. I stood with Chief Balderrama and DA Smittcamp this afternoon to address the media, reminding our entire community that these fake threats are unacceptable, will be investigated, and will be prosecuted. I must remind all our students and community that this is not funny or ever to be taken as a joke – parents, students, and staff were terrified for their lives this afternoon. None of that is funny and it will not be tolerated in our district.
- Second, I need to also acknowledge our press conference last week with Fresno Police Department to release information and video of a former principal aggressively shoving down one of our students at Wolters Elementary School in June. Let me be VERY clear, there is absolutely NO excuse for this appalling behavior and this conduct is absolutely not tolerated at Fresno Unified. The district does not tolerate this kind of conduct at any time and has no interest in retaining any employee who has engaged in such harmful behavior. Upon becoming aware of the altercation, our team immediately placed the employee on leave, and the following day reported the event to the Fresno Police Department and CPS. After an investigation, our district began the disciplinary process against Mr. Vollhardt, which included reporting our findings to all appropriate state agencies, at which point he resigned from our district.
- I would be remiss to not acknowledge the dynamics of race within this altercation. While there has been no information to lead us to believe this was a racially motivated altercation, we are not blind to the fact that racial dynamics are always present. We also are not blind to the fact that seeing this footage of a white principal aggressively pushing down an African American young boy is going to be triggering and potentially traumatizing, especially for our African American community.

HEAR Report from Superintendent – continued

- To any of our students, families, and staff who are struggling as they process the footage of this disturbing event, please reach out to us for help. Students, please reach out to a trusted adult on campus, families please access our CareSolace supports through our website, and staff please use our EAP supports or reach out to your supervisor or HR for resources.
- It has been a tough couple of weeks, there is no denying that. But I must acknowledge some amazing things that are also happening around the district. This week tickets went on sale for our State of Education Gala happening on October 6th at the Fresno Chaffee Zoo. We'll be making our official public launch of the Foundation for Fresno Unified Schools and all proceeds will support our scholarship fund. Individual tickets are available for sale online by clicking the link on our homepage at fresnounified.org. If you're interested in sponsoring the event, please reach out to Wendy McCulley our Chief of Engagement and External Partnerships.
- Fresno Unified is currently surveying families on important household and income data through our annual Confidential Family Survey or CFS. While this information remains confidential, the results are crucial to determining district and school funding through the Local Control Funding Formula (LCFF). Families who participate may also qualify their students for other individual benefits, such as discounts or waivers for SAT, ACT, and AP assessments, discounts on college application fees, Pandemic Electronic Benefit Transfer (P-EBT) benefits, and/or automatic enrollment and a $500 deposit in a CalKIDS account for future education costs after high school! CFS is distributed electronically for selected families who are eligible. Families who are required to complete this form will be sent family letters and personalized survey links through their preferred form(s) of communication with FUSD (text message, personal email, and/or ATLAS Connect) and their student's email. Your partnership is appreciated. Please complete this online survey by Friday, September 23rd.
- To wrap up, I'd like to share a video of the beautiful celebration held last week to recognize H. Roger Tatarian's renaming and new mascot and branding. Mr. Tatarian, who passed away in 1995, was born in Fresno, attending Jackson Elementary School, Longfellow Junior High, and Roosevelt High School, where he was a top graduate and commencement speaker. He graduated from Fresno State and launched an illustrious career as a newspaper journalist and editor, overseeing United Press International (UPI) news bureaus around the world. Upon retiring from UPI, Mr. Tatarian returned to Fresno to teach a new generation of journalists for 15 years. He is the only person to be named both outstanding alumnus and outstanding professor for Fresno State. Check out this quick video of the celebration.
- Shared Tatarian celebration video.

OPPORTUNITY for Public Comment on Consent Agenda Items

For the record, the Board received zero requests to address the Board on the Consent Agenda.

On a motion by Board Member Thomas, seconded by Board Member Davis, the Consent Agenda, apart from Agenda Items A-6, A-7, A-8, A-11, and A15, which were pulled by Board Members for further discussion, was approved by a roll call vote of 6-0-0-1, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Thomas, and President Jonasson Rosas. ABSENT: Board Member Major Slatic.

ALL CONSENT AGENDA items are considered routine by the Board of Education and will be enacted by one motion. There will be no separate discussion of items unless a Board member so requests, in which event, the item(s) will be considered following approval of the Consent Agenda. Pulled Consent Agenda Items will be considered for approval after the Conference/Discussion Agenda.

A. CONSENT AGENDA

A-1, APPROVE Personnel List
APPROVED as recommended, the Personnel List, Appendix A, as submitted.

A-2, ADOPT Findings of Fact and Recommendations of District Administrative Board
ADOPTED as recommended, the Findings of Fact and Recommendations of District Administrative Panels resulting from hearings on expulsion and readmittance cases conducted during the period since the August 24, 2022, Regular Board Meeting.

A-3, APPROVE Minutes from Prior Meeting
APPROVED as recommended, the draft minutes for the August 24, 2022, Regular Board Meeting.

A-4, APPROVE 2022/23 Spring Release Consolidated Application to the California Department of Education
APPROVED as recommended, a budget summary for the Consolidated Application (Con App).

A-5, APPROVE Agreement with Aston Carter Workforce Solutions for the Development of Employee Safety Training Videos
APPROVED as recommended, an agreement for Aston Carter for the development of online employee safety trainings focused on lockdowns, fire, earthquakes, and active assailant response protocols.

A-6, APPROVE Agreement with Hanover Research
APPROVED as recommended, a three-year agreement with Hanover Research (Hanover) in the amount of $247,270.
For the record, Board Members had comments/questions pertaining to Agenda Item A-6. A summary is as follows: Inquired why the agreement is for three years.

A. CONSENT AGENDA - continued

Inquired if this agreement is part of the Council of the Great City Schools oversight. Manager Luis Ramirez and Superintendent Dr. Nelson were available to provide clarity.

On a motion by Board Member Davis, seconded by Board Member Thomas, Agenda Item A-6, was approved by a vote of 7-0-0-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and President Jonasson Rosas.

A-7, APPROVE Agreement between Fresno Unified School District and Kenneth N. Sawatsky

APPROVED as recommended, an agreement between Fresno Unified School District and Kenneth N. Sawatsky, from September 19, 2022, through June 30, 2023.

For the record, Board Members had comments/questions pertaining to Agenda Requested clarity as to the variety of media services offered in the agreement and how best to communicate to families. Requested clarity as to if the item was in support of teachers. Chief Academic Officer Dr. Baker was available to provide clarity.

On a motion by Board Member Davis, seconded by Board Member Thomas, Agenda Items A-7, was approved by a vote of 7-0-0-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and President Jonasson Rosas.

A-8, APPROVE Agreement with Performance Fact, Inc.

APPROVED as recommended, an agreement with Performance Fact, Inc. in the amount of $21,280.

For the record, Board Members had comments/questions pertaining to Agenda Item A-8. A summary is as follows: Requested clarity as to the work of the Performance Fact, Inc. agreement. Executive Director Mitchell was available to provide clarity.

On a motion by Board Member Davis, seconded by Board Member Thomas, Agenda Item A-8, was approved by a vote of 7-0-0-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and President Jonasson Rosas.

A-9, APPROVE Agreement with The Pi Shop Product Incubator

APPROVED as recommended, an agreement to fund the program and work-based learning experiences provided by The Pi Shop Product Incubator for the 2022/23 academic school year at Patiño High School.

A. CONSENT AGENDA - continued

A-10, APPROVE Agreement between Fresno Unified School District and PPL Studio, LLC
APPROVED as recommended, an agreement between Fresno Unified School District and PPL Studio, LLC from September 19, 2022, through June 30, 2023.

A-11, RATIFY Agreement with The New Teacher Project for the Good 2 Great Summer Math Academy
RATIFIED as recommended, an agreement with The New Teacher Project for the Good 2 Great Summer Math Academy.

For the record, Board Members had comments/questions pertaining to Agenda Item A-11. A summary is as follows: Requested clarity as to how many teachers attended the academy and how success was measured. Requested clarity as to why so few teachers attended, and why attendance was not mandated. Requested clarity as to how data will be provided to Board Members. Requested clarity as to metrics used to measure success. Instructional Superintendent Castillo was available to provide clarity.

On a motion by Board Member Davis, seconded by Board Member Thomas, Agenda Item A-11, was approved by a vote of 7-0-0-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and President Jonasson Rosas.

A-12, RATIFY Change Orders
RATIFIED as recommended, information on Change Orders for the following projects:

Bid 21-11, Edison High School Gymnasium Addition
Change Order 11 presented for ratification $10,706

Bid 21-34, Ventura and 10th South Campus Site and Tenant Improvements for Buildings C and D
South Campus Site, Change Order 6 presented for ratification $ - 90,321
Tenant Improvements, Change Order 6 presented for ratification $71,491

Bid 21-40, Hoover High School Event Center HVAC and Roof Replacement
Change Order 1 presented for ratification $91,838

Bid 21-42 Section A, Bullard High School Athletic Field Improvements
Change Order 6 presented for ratification $2,470

A-13, RATIFY the Filing of a Notice of Completion
RATIFIED as recommended, a Notice of Completion for the following project, which has been completed according to plans and specifications.

A. CONSENT AGENDA - continued

Bid 20-49, Juan Felipe Herrera New Elementary School

A-14, RATIFY Purchase Orders from June 01, 2022, through June 30, 2022 – Primary Report
RATIFIED as recommended, information on purchase orders issued from June 01, 2022, through June 30, 2022.

A-15, RATIFY Purchase Orders from June 01, 2022, through June 30, 2022 – Supplemental Report
RATIFIED as recommended, information on purchase orders issued from June 01, 2022, through June 30, 2022.

For the record, Board Member Levine read a statement as follows:

> Agenda Item A-15 on tonight's consent agenda contains purchase orders with the California State University, Fresno. I am employed by Fresno State, I did not participate in the contracts making these purchase orders, but because of my employment with Fresno State I have a remote financial interest in those contracts. Therefore, in the interest of full transparency I am abstaining from this vote pursuant to board bylaw 9270.

On a motion by Board Member Thomas, seconded by Board Member Davis, Agenda Item A15, was approved by a vote of 6-0-1-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Major Slatic, Thomas, and President Jonasson Rosas. ABSTENTION: Board Member Levine.

B. CONFERENCE/DISCUSSION AGENDA

B-16, DISCUSS and APPROVE the 2021/22 Unaudited Actual Financial Report, 2021/22 Year-End Budget Revision and 2022/23 Gann Limit

OPPORTUNITY for Public Comment
For the record, the Board received zero requests to address the Board on Agenda Item B-16.

For the record, Board members had comments/questions pertaining to Agenda Item B-16. A summary is as follows: Requested clarity to information presented pertaining to Workers' Compensation and asked why there was a decrease and what caused the decrease. Requested clarity as to if there was fluctuation in the property tax income. Requested clarity as to if there is direction as to where the income is used or if the district has autonomy to dedicate the resources. Requested clarity as to if district expenses on actuaries is rolled into expenses for

consultants or if there are two separate line items. Requested clarity as to how many actuarial firms are used by the district. Requested a board communication be provided to include three (3) to five (5) years, ideally five (5) years, of all district expenses for work related to actuaries. Requested clarity to information presented pertaining to other post-employment benefits reserve and why there was a decrease and what caused the decrease. Recommended the district stay on a course to maintain gains rather than losses. Requested clarity as to if the district has seen Workers' Compensation claims pertaining to long-term COVID. Commented on the school sites' abilities to fund raise may be greater than others. Chief Financial Officer Danisi was available to provide clarity.

On a motion by Board Member Davis, seconded by Board Member Thomas, Agenda Item B-16, was approved by a vote of 7-0-0-0, as follows: AYES: Board Members: Cazares, Davis, Islas, Levine, Major Slatic, Thomas, and President Jonasson Rosas.

B-17, OPPOR' Item pulled from agenda by Staff of the 2022/23 Negotia Jnified School District and California School Employees Association, Chapter 143

B-18, PRESENT and DISCUSS Proposed Reorganization of Human Resources

OPPORTUNITY for Public Comment
For the record, the Board received zero requests to address the Board on Agenda Item B-18.

For the record, Board members had comments/questions pertaining to Agenda Item B-18. A summary is as follows: Requested clarity as to philosophy used pertaining to span of control when creating reorganization plan. Asked, hypothetically, how long to fill a vacant position listed on reorganization chart. Requested clarity as to estimated time until plan is fully implemented. Requested clarity as to how long to fill a vacant teacher position. Commented it should not take 39 days to fill a teacher position. Requested clarity as to what qualifies as an open position and if there is a fast lane created to hire. Requested staff to not lose sight of qualitative work and asked how the district is aligning values to investments. Commented on the need to grow the district workforce and how program expansion is stifled when there is a lack of a qualified workforce. Commented on the importance of countering the perception that a person can do badly and still stay in the district. Important to have a system in place to identify and remove poor performers at every level from the system. Commented on the need for screening measures to combat issues the district is facing. Recommended staff to add additional analyst or data specialist positions in performance, evaluation, and retention. Requested clarity as to cost listed on slides nine (9) and ten (10). Chief of Human Resources/Labor Relations Chavez was available to provide clarity.

C. RECEIVE INFORMATION & REPORTS

For the record, the Board was in receipt of three items as follows:

C-19, RECEIVE Results of Issuance and Sale of the General Obligation Bonds, Election of 2020, (Measure M), Series B Bonds

C-20, RECEIVE Constituent Services Quarterly Reporting

C-21, RECEIVE Call for Appointments to the California School Boards Associations' Delegate Assembly

OPPORTUNITY FOR UNSCHEDULED ORAL COMMUNICATIONS

For the record, the Board received eight (8) requests to address the Board during Unscheduled Oral Communications. The individual's name along with a summary of topic is listed as follows:

1. Eric Rollins: Commented on concerns regarding grading with equity.
2. Jim Barr: Not present when called to the podium.
3. Ruben: Commented regarding incident at Wolters. Commented on concerns pertaining to system failures and requested the Board to look at what student safety looks like.
4. Janet Corza-Lara: Commented on active shooter drills and bells at school sites are confusing for students. Commented on the importance of focusing on prevention.
5. Vanoush Khachaturyan: Thanked those who attended the Roger H. Tatarian school naming ceremony. Suggested a district foundation partnering with community partners which would champion student engagement within the community.
6. Monica Harrison Snowden: Commended Trustee Levine's father for his contribution as a psychologist. Shared concern pertaining to incident at Wolter's. Shared concern of how she sees Fresno and Fresno Unified. Commented on more work need toward prevention.
7. Mia Pacheco: Shared her experience moving to another classroom when AC was down in her classroom. Invited Trustee Thomas to a play at her school. Thanked Trustee Major Slatic for his work and provided him a bag of Taki's.
8. Marycela Pacheco: Ceded time to Trustee Major Slatic

For the record, Trustee Major Slatic provided a speaker card at the beginning of the board meeting; however, when Mrs. Pacheco arrived, he pulled his speaker card. Thus, his time to speak was three (3) minutes rather than six (6).

Trustee Major Slatic commended the Fresno Police Department on the handling of an incident at Bullard. Commented they handled the incident flawlessly. Additionally, commented on the perimeter of the campus and the need for a new fence.

D. ADJOURNMENT

Board President Jonasson Rosas ADJOURNED the meeting at 8:20 p.m.

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-4

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Adopt
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Adopt Resolution 23-06, Recognizing Hispanic Heritage Month

ITEM DESCRIPTION: Included in the Board binders is a resolution commemorating the observance of Hispanic Heritage Month. National Hispanic Heritage Month is an opportunity to recognize the contributions made by Hispanic and Latino Americans to the United States and celebrate their heritage and culture. Hispanics have had a profound and positive influence on our country through their strong commitment to family, faith, hard work, and service. Fresno Unified School District hereby proclaims September 15, 2022, through October 15, 2022, as Hispanic Heritage Month.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Ambra O'Connor,
Chief of Staff

DIVISION: Superintendent's Office
PHONE NUMBER: (559) 457-3566

CABINET APPROVAL: Ambra O'Connor,
Chief of Staff

SUPERINTENDENT APPROVAL:

Fresno Unified School District

Achieving our Greatest Potential!

BOARD OF EDUCATION
Elizabeth Jonasson Rosas, President
Genoveva Islas, Clerk
Claudia Cazares
Valerie F. Davis
Andy Levine
Major Terry Slatic USMC (Retired)
Keshia Thomas

SUPERINTENDENT
Robert G. Nelson, Ed.D

BEFORE THE BOARD OF EDUCATION
OF FRESNO UNIFIED SCHOOL DISTRICT
OF FRESNO COUNTY, CALIFORNIA

In the Matter of Proclaiming)
September 15 through October 15, 2022)
Hispanic Heritage Month)

RESOLUTION 23-06

WHEREAS, National Hispanic Heritage Month is celebrated in recognition of the historical and cultural contributions of Hispanics and cover a wide range of independence days of several Latin American countries, including Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Chile, and México; and

WHEREAS, Hispanic Heritage Month is an opportunity to recognize and appreciate Latin Americans and all those who share family ties with Latin America, regardless of their place of residence, for their culture, social connections, and economic partnerships, and

WHEREAS we recognize the many accomplishments of our Fresno Unified students during Hispanic Heritage Month; and

WHEREAS we firmly believe that the celebrations during Hispanic Heritage Month will revitalize the ideals that nourish the partnership between Latin American countries and the United States.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education of Fresno Unified School District designates September 15 through October 15, 2022, Hispanic Heritage Month and all educational sites are encouraged to recognize the many accomplishments and contributions of Hispanics throughout the curriculum and activities at school sites.

ADOPTED this 28th day of September 2022 by the Board of Education of Fresno Unified School District, by the following vote:

AYES: 7
NOES: 0
ABSENT: 0

Elizabeth Jonasson Rosas (Sep 29, 2022 10:48 PDT)

Elizabeth Jonasson Rosas, Board President

Robert G. Nelson

Robert G. Nelson, Ed.D., Superintendent

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-5

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Adopt
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Adopt Variable Term Waiver for Bilingual Cross-Cultural, Language and Development Authorization

ITEM DESCRIPTION: Included for Board consideration and adoption are Variable Term Waiver requests for Bilingual Cross-Cultural, Language and Development (BCLAD) Authorization for the 2022/23 school year. The Education Code 44225(m) allows the commission to grant waivers to fill in an area that is deemed hard-to-fill. The candidates referenced below are working toward completing the required coursework for the Multiple Subject Credential and BCLAD Authorization.

Name	Site	Credential/BCLAD Language
Mario Arciniega Ovalle	Burroughs	Bilingual Spanish
Lizeth Arellano Torres	Roeding	Bilingual Spanish

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez,
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-6

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Adopt
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Adopt Resolution 23-03, Authorizing the California Energy Commission's California Schools Healthy Air, Plumbing, and Efficiency Program for the Acceptance of Grant Award and Entering into Grant Agreement

ITEM DESCRIPTION: It is recommended the Board adopt Resolution 23-03 for the California Energy Commission's (CEC) California Schools Healthy Air, Plumbing, and Efficiency Program Governing Body Resolution, authorizing the acceptance of a grant award, and entering into a grant agreement for awarded program funds. Fresno Unified School District has received a Notice of Proposed Award from the CEC round 2 funding for a School Plumbing Fixture and Appliance Replacement Grant totaling $357,174.94.

The grant will fund the purchase of new commercial dishwasher appliances at nine school sites: Baird, Fort Miller, Kings Canyon, Sequoia, Terronez, Tioga, and Yosemite Middle Schools; Wawona K-8 and Fresno High School.

The Board of Education approved this grant application at the June 15, 2022 meeting on Agenda Item A-31. The School Plumbing Fixture and Appliance Replacement Grant funds can be used only for costs directly related to the replacement of the noncompliant plumbing fixtures and appliances with water-conserving plumbing fixtures and appliances. The district was also awarded program funds from Round 1 totaling $370,493.30 earlier this year.

FINANCIAL SUMMARY: The program funds the purchase of new commercial appliances. Minor costs for electrical or plumbing improvements may be necessary for the installation of the new appliances.

PREPARED BY: Amanda Harvey,
Director, Nutrition Services

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor Management Officer

SUPERINTENDENT APPROVAL:

California Schools Healthy Air, Plumbing, and Efficiency Program
Governing Body Resolution

RESOLUTION NO. 23-03

Resolution of
Fresno Unified School District

Name of Local Educational Agency (the LEA)

WHEREAS, the California Energy Commission's California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Program provides grants to local educational agencies (LEA), that includes school districts, charter schools, and regional occupational programs, to fund the assessment, maintenance, and repair of ventilation systems, installation of carbon dioxide monitors, and replacement of noncompliant plumbing fixtures and appliances;

NOW THEREFORE, BE IT RESOLVED, that the Board of Education
Governing Body (the Governing Body)

authorizes the LEA to apply for a grant from the California Energy Commission to implement a CalSHAPE Program project.

BE IT ALSO RESOLVED, that in compliance with the California Environmental Quality Act (CEQA), the Governing Body finds that the activity funded by the grant is (Please select one)

☒ not a project because installation of dishwashers at 9 schools will have no significant effect on the environment, and is not subject to CEQA by the Common Sense Exemption {Cal. Code Regs. tit.14, 15061 (b)(3)}

OR

☐ a project that is exempt under _____ because _____

OR

☐ a project and _____ _____document was prepared.

BE IT ALSO RESOLVED, that if recommended for funding by the California Energy Commission, the Governing Body authorizes the LEA to accept a grant up to $357,174.94 and accept all grant agreement terms and conditions.
Grant Amount Requested

BE IT FURTHER RESOLVED, that Robert G. Nelson,
Name of Designated LEA Official or Staff

Paul Idsvoog, and Santino Danisi,
Name of Designated LEA Official or Staff *Name of Designated LEA Official or Staff*

are hereby authorized and empowered to execute in the name of the LEA all necessary documents to implement and carry out the purpose of this resolution, and to undertake all actions necessary to undertake and complete the energy efficiency projects.

Passed, Approved and Adopted this 28 day of September, 2022.
Month *Year*

Governing Body Representatives (Print Names):

Elizabeth Jonasson Rosas, President	Claudia Cazares
Genoveva Islas, Clerk	Valerie F. Davis
Andy Levine	Keisha Thomas
Major Terry Slatic USMC (Retired)	

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-7

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Adopt
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Adopt Resolution 23-04, Resolution Declaring Property Located at 2526 East Hedges Avenue as Surplus, Determining a Notice of Exemption, Approving Offers to Certain Public Agencies and Other Related Matters

ITEM DESCRIPTION: Included in the Board binders and recommended for adoption is Resolution 23-04, to declare the property located at 2526 East Hedges Avenue as surplus, determining a notice of exemption, approving offers to certain public agencies and other related matters. The district owns a .62 acre parcel (27,000 sq/ft) on East Hedges Avenue (near Fresno and Olive Streets). In the past, the buildings located on the site housed InformationTechnology Services, but the buildings became vacant in 2019 and were demolished in 2020 by order of the Board in Resolution 19-42. The property is currently vacant.

The Board appointed an Advisory Committee on June 13, 2018, Resolution 17-52, to review and study the property and the Advisory Committee has recommended that the property be sold, as surplus to the district's needs. The Board was advised of the Advisory Committee's recommendation in Board Communications on December 03, 2018 (BC Number OS-1), September 24, 2021 (BC Number OS-1), and October 22, 2021 (BC Number OS-2). Included in the Board binders and recommended for adoption is Resolution 23-04, to approve the sale and disposition of the property. Following Board approval of the resolution, the process of selling the property can begin. State law requires that certain local public agencies be provided an opportunity to buy the property and, if no responses are received, then the property will be sold to the highest bidder. In 2021, the district received a Brokers Opinion of Value of the property of between $4.00 and $7.00/sq/ft. The property is zoned CG (Commercial General).

FINANCIAL SUMMARY: Adoption of Resolution 23-04 has no immediate or direct financial impact, but the district will realize the sale proceeds when the property is ultimately sold.

PREPARED BY: Alex Belanger,
Chief Executive, and Ann Loorz,
Executive Director, Purchasing

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor
Management Officer

SUPERINTENDENT APPROVAL:

FRESNO UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

RESOLUTION NO. 23-04

RESOLUTION DECLARING PROPERTY SURPLUS, DETERMINING A NOTICE OF EXEMPTION, APPROVING OFFERS TO CERTAIN PUBLIC AGENCIES AND OTHER RELATED MATTERS

WHEREAS, Fresno Unified School District (the "District") is the owner of certain real property known as the Hedges Property, Assessor's Parcel Numbers (APN) 451-311-02T, located at 2526 E. Hedges Avenue (the "Property"). The Property is located in the City of Fresno, County of Fresno, and within the territory of the District and as more specifically described in Exhibit A, attached hereto, and incorporated herein by reference; and

WHEREAS, the District's advisory 7-11 committee ("Committee") was approved to be formed on June 13, 2018, for the purpose of reviewing projected enrollment figures in the District in order to determine surplus space and real property, including the Property, establish a priority list of use of the surplus space and real property, make a determination on the use of the space and the real property, and forward a report to the Board on such findings and recommendations; and

WHEREAS, the Committee met on November 28, 2018, held the required public hearing and conducted the above-referenced review relating to several properties, including the Property, and recommended that the Property be declared surplus and sold by the District, among other recommendations; and

WHEREAS, on November 30, 2018, the District's Board of Education ("Board") received the final report prepared by the Committee, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference; and

WHEREAS, the Committee's recommendations are advisory only and are not binding on the Board; and

WHEREAS, the interests of the District and the local community would best be served by the District's sale of the Property; and

WHEREAS, the Property is bare land and has not been used for educational purposes for more than three (3) years; and

WHEREAS, this Board now wishes to proceed with the declaration that the Property is surplus to the District's needs consistent with the findings in the Committee's final report; and

WHEREAS, the District has no current need for the Property, the Property is surplus to the District's needs, and is "excess real property" pursuant to Education Code section 17388; and

WHEREAS, the California Surplus Land Act, as modified by California Assembly Bill 1486, which was signed into law by the Governor on October 9, 2019, defines "exempt surplus land" to include excess school district real property that is subject to Education Code section 17388; and

WHEREAS, this Board now wishes to offer the Property for sale to public entities as statutorily required pursuant to Education Code section 17464, *et seq*. and Government Code section 54220, *et seq*.; and

WHEREAS, it is this Board's intent that should no such public entities express an interest in purchasing the Property, the Board will proceed with the sale of the Property to members of the public and put the Property out to bid in accordance with the terms of a future Resolution of this Board and in accordance with applicable law; and

WHEREAS, the Property is not subject to the Naylor Act pursuant to Education Code section 17485, *et seq*.

NOW, THEREFORE, BE IT RESOLVED that this Board hereby finds the Property to be surplus property that the District will not need for educational purposes at the time of delivery of possession; and

BE IT FURTHER RESOLVED that this Board hereby authorizes the Property to be offered for sale or lease to entities as statutorily required pursuant to: (1) Education Code section 17464, *et seq*.; and (2) Government Code section 54220, *et seq*.

BE IT FURTHER RESOLVED that the Property is governed by Education Code section 17388, and in light of the application of that section, pursuant to Government Code sections 54221(b)(1) and (f)(1) as modified by Assembly Bill 1486, the Board hereby declares that the Property is "exempt surplus land" under the California Surplus Land Act (Gov. Code §54220, et seq.).

BE IT FURTHER RESOLVED that District staff and consultants are authorized and directed to proceed with the steps necessary or convenient to effect the offers of the Property in accordance with law and the terms of this Resolution.

BE IT FURTHER RESOLVED that, should no such public entities express an interest in purchasing the Property, this Board declares its intention to proceed with the sale of the Property in accordance with applicable law.

BE IT FURTHER RESOLVED that the disposal of surplus real property is exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21084 and related regulations (14 CCR 15061, 15312) and a Notice of Exemption shall be prepared and filed.

The foregoing Resolution was adopted at a meeting of the Board of Education of the Fresno Unified School District this 28th day of September 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I, Elizabeth Jonasson-Rosas President of the Fresno Unified School District Governing Board, do hereby certify that the foregoing is full, true, and correct copy of the Resolution passed and adopted by said Board at a regularly scheduled and conducted meeting held on said date, which Resolution if on file in office of said Board.

_____
President of the Board of Education
Fresno Unified School District

I, Genoveva Islas, Clerk of the Board of Education of the Fresno Unified School District Governing Board, do hereby certify that the foregoing Resolution was regularly introduced and adopted by the Board of Education of the Fresno Unified School District Governing Board at a regular meeting thereof held on the 28th day of September 2022, by the above-described vote of the Governing Board;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Fresno Unified School District Governing Board this 28th day of September 2022.

_____
Clerk of the Board of Education
Fresno Unified School District

EXHIBIT A

2526 E Hedges Ave, Fresno, CA 93703

Q659+PQ Fresno, California

Photos

Google Maps 2526 E Hedges Ave

Map data ©2022 Google 50 ft

EXHIBIT B

FRESNO UNIFIED SCHOOL DISTRICT
BOARD COMMUNICATION

BC Number: OS - 1

From the Office of the Superintendent	Date: December 3, 2018
To the Members of the Board of Education	
Prepared by: Karin Temple, Chief Operating Officer	Phone Number: 457-3134
Cabinet Approval: KSTemple	
Regarding: **Advisory Committee on Disposition of District Property**	

The purpose of this communication is to provide the Board information regarding a meeting of the district's Advisory Committee on Disposition of District Property (Property Committee). The district owns properties that no longer meet its needs and are contemplated for sale. Per Education Code section 17388, prior to the sale or lease of excess property, school districts are required to convene a committee to provide an advisory recommendation to the Board on such sale or lease. On June 13, 2018, the Board adopted Resolution 17-52 authorizing the formation of a Property Committee and delegating to the Superintendent or his designee the authority to appoint members. The Property Committee met on November 28, 2018 to receive information, ask questions, and provide input regarding two properties contemplated for sale:

- 2540 E. Hedges Avenue (former computer services office space)
- 3224 E. Central Avenue (former Konkel School site, now vacant land)

The Property Committee was unanimous in its advisory recommendation that the district sell the two properties. The combined appraised value of the properties (July 2018) is $2.225 million. Proceeds from the sale of excess property are to be used for capital improvement projects or property acquisition. The presentation to the Property Committee is attached.

Property Committee members and the perspective they represent are:

- Jon Bath – teachers
- Susan Bedi – administrators
- Mike Betts – business community
- Cherella Nicholson – neighborhood group
- Scott Odell – land use/planning expertise
- Jenelle Pitt – parents of district students
- Reginald Ruben – parents of district students
- Moua Yang – parents of district students

The next step is to engage a real estate professional(s) to market the properties, selecting from the entities approved by the Board on June 13, 2018 based on a competitive Request for Qualifications process. If you have questions or need further information, please call Karin Temple at 457-3134.

Approved by Superintendent:
Robert G. Nelson, Ed.D. Robert G. Nelson Date: 12/03/18

Fresno Unified School District
Board Communication

BC Number OS-1

From the Office of the Superintendent
To the Members of the Board of Education
Prepared by: Karin Temple, Chief Operating Officer KTemple

Date: September 24, 2021

Phone Number: 457-3134

Regarding: Disposition of Hedges Property

The purpose of this communication is to provide the Board information regarding the district-owned vacant property at 2526/2450 E. Hedges Avenue (near Fresno and Olive). The .62 acres parcel previously housed a building most recently occupied by Technology Services. The building was vacated in 2019 and demolished in 2020 due to the potentially hazardous conditions it created.

The Hedges property is not suitable for a district facility due to its size, and it is planned to be offered for sale. Staff is working with a Board-approved real estate professional to market the property and has consulted legal counsel to ensure all statutory requirements are met. The property is zoned commercial and estimated to have a value between $100,000 and $200,000.

If you have questions or need further information, please contact Karin Temple at 457-3134.

Approved by Superintendent
Robert G. Nelson Ed.D. Robert G. Nelson

Date: 09/24/21

Fresno Unified School District
Board Communication

BC Number OS-2

From the Office of the Superintendent
To the Members of the Board of Education
Prepared by: Karin Temple, Chief Operating Officer
Cabinet Approval: K.Temple

Date: October 22, 2021

Phone Number: 457-3134

Regarding: Disposition of Hedges Property

The purpose of this communication is to provide the Board additional information regarding the district-owned property at 2526/2450 E. Hedges Avenue (near Fresno and Olive). The .62 acres parcel previously housed a building most recently occupied by Technology Services. The building was vacated in 2019 and demolished in 2020. In a September 24, 2021 Board Communication, staff reported that the property is planned to be offered for sale, as it is too small to be suitable for a district facility. At the October 13, 2021 Board meeting a Trustee suggested that rather than selling the property, the district should consider the site for an early learning facility.

Facilities and Early Learning staff closely reviewed the square footage licensing requirements for an early learning facility, including classrooms, cafeteria, outdoor playground and storage spaces, site supervisor and office assistant spaces, restrooms for students and staff, space for nurse's office and washer/dryer, staff lounge, parking lot, and required frontages. For additional evaluation, site maps of two existing early learning facilities (Ewing's new building and Lavera Williams Center) were overlaid on the Hedges site to verify space deficiencies. It was again concluded that the property is not large enough to support an early learning facility. Therefore, staff does not recommend development of an early learning center at the Hedges location and continues to recommend selling the property. Sites elsewhere in the district are being evaluated for the potential to house an early learning facility.

If you have questions or need further information, please contact Karin Temple at 457-3134.

Approved by Superintendent
Robert G. Nelson Ed.D. Robert G. Nelson Date: 10/22/21

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-8

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Revised Certificated Management Daily Salary Schedules 215 Duty Days

ITEM DESCRIPTION: Included for the Board's consideration and approval are the revised Certificated Management Daily Salary Schedules 215 Duty Days.

- Certificated Management Monthly Salary Schedule 215 Duty Days (11 Month Work Schedule)
- Certificated Management Monthly Salary Schedule 215 Duty Days (12 Month Work Schedule)

The reason for bringing the revised salary schedule for approval is to provide a publicly available Board approved salary schedule as required by CalSTRS and CalPERS regulations. Annual Board Approval of employee salary schedules is consistent with best practices and is recommended by the Fresno County Superintendent of Schools.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

Fresno Unified School District

Certificated Management Monthly Salary Schedule 2022-2023

Effective July 1, 2022

Management 215 Duty Days (11 Month/August to June Work Schedule)

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5
E28	Principal III	E147	$9,947.17	$10,444.64	$10,967.00	$11,515.32	$12,091.05
	Principal III on Special Assignment	E215					
E27	Principal II on Special Assignment	E146	$9,656.74	$10,139.21	$10,645.83	$11,178.41	$11,737.70
E26	Manager III, Special Education Programs and Services	E124	$9,196.59	$9,656.74	$10,139.21	$10,645.83	$11,178.41
	Vice Principal III on Special Assignment	E192					
E25	Manager II - Specialized Programs	E245	$8,758.77	$9,196.59	$9,656.74	$10,139.21	$10,645.83
	Manager II, Campus Culture	E033					
	Manager II, English Language Development	E040					
	Manager II, Nurse Educator	E273					
	Manager II, Preschool Infant	E047					
	Manager II, Regional Instructional	E222					
	Manager II, Social Emotional Support	E028					
	School Psychologist - District	E151					
	Vice Principal II on Special Assignment	E217					
	Vice Principal II	E190					
			$8,341.77	$8,758.77	$9,196.59	$9,656.74	$10,139.21
E24	Manager I, Autism Support	E153					
	Manager I, Prevention and Intervention	E055					
	Manager I, Technology Training	E157					
	School Counselor	E060					
	Vice Principal I on Special Assignment	E187					
			$7,944.49	$8,341.77	$8,758.77	$9,196.59	$9,656.74
E23	Coordinator II, Attendance	E137					
	School Social Worker	E152					

Year: Management Salary Schedule 2022-2023

Salary may be pro-rated based on FTE (<1.0 FTE)

Year 2022-23

No pay change

Board approved PENDING

Fresno Unified School District

Certificated Management Monthly Salary Schedule 2022-2023

Effective July 1, 2022

Management 215 Duty Days (11 Month/August to June Work Schedule)

A. BONUS ADDITIONS TO PLACEMENT OF BASIC SCHEDULE (ADDITIVE)
Annual $500 for B.A. + 90*
Annual $1000 for M.A. on all classes*
Annual $1500 for Earned Doctorate*
Career Increment of 0.75% each year from the 11th to the 20th year to a total of 7.5% at the 20th year and thereafter.
*Additions are non-cumulative

B. MENTOR/LEADERSHIP COACH INCREMENT
An increment of 5% to 10% added to step and grade as part of base salary upon approval by Superintendent or Chief of HR/LR.

C. CHALLENGING ASSIGNMENT INCENTIVE
Up to 10% increase to base salary upon hire, promotion or reassignment to a position among the most challenging assignments upon approval by Superintendent or Chief of HR/LR.

The intent with respect to the Mentor/Leadership Coach Increment and the Challenging Assignment Incentive is that these two opportunities are mutually exclusive such that no manager/supervisor may receive both the Increment and the Incentive at the same time.

Year 2022-23
No pay change
Board approved PENDING

Fresno Unified School District

Certificated Management Monthly Salary Schedule 2022-2023

Effective July 1, 2022

Management 215 Duty Days (12 Month/July to June Work Schedule)

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5
E28	Principal III	E147	$9,118.24	$9,574.25	$10,053.08	$10,555.71	$11,083.47
	Principal III on Special Assignment	E215					
E27	Principal II on Special Assignment	E146	$8,852.01	$9,294.28	$9,758.68	$10,246.87	$10,759.56
E26	Manager III, Special Education Programs and Services	E124	$8,430.21	$8,852.01	$9,294.28	$9,758.68	$10,246.87
	Vice Principal III on Special Assignment	E192					
E25	Manager II - Specialized Programs	E245	$8,028.87	$8,430.21	$8,852.01	$9,294.28	$9,758.68
	Manager II, Campus Culture	E033					
	Manager II, English Language Development	E040					
	Manager II, Nurse Educator	E273					
	Manager II, Preschool Infant	E047					
	Manager II, Regional Instructional	E222					
	Manager II, Social Emotional Support	E028					
	School Psychologist - District	E151					
	Vice Principal II on Special Assignment	E217					
	Vice Principal II	E190					
E24	Manager I, Autism Support	E153	$7,646.62	$8,028.87	$8,430.21	$8,852.01	$9,294.28
	Manager I, Prevention and Intervention	E055					
	Manager I, Technology Training	E157					
	School Counselor	E060					
	Vice Principal I on Special Assignment	E187					
E23	Coordinator II, Attendance	E137	$7,282.45	$7,646.62	$8,028.87	$8,430.21	$8,852.01
E21	School Social Worker	E152	$6,605.50	$6,935.76	$7,282.45	$7,646.62	$8,029.00

Year 2022-23
No pay change
Board approved PENDING

Year: Management Salary Schedule 2022-2023
Salary may be pro-rated based on FTE (<1.0 FTE)

Fresno Unified School District

Certificated Management Monthly Salary Schedule 2022-2023

Effective July 1, 2022

Management 215 Duty Days (12 Month/July to June Work Schedule)

A. BONUS ADDITIONS TO PLACEMENT OF BASIC SCHEDULE (ADDITIVE)
Annual $500 for B.A. + 90*
Annual $1000 for M.A. on all classes*
Annual $1500 for Earned Doctorate*
Career Increment of 0.75% each year from the 11th to the 20th year to a total of 7.5% at the 20th year and thereafter.
*Additions are non-cumulative

B. MENTOR/LEADERSHIP COACH INCREMENT
An increment of 5% to 10% added to step and grade as part of base salary upon approval by Superintendent or Chief of HR/LR.

C. CHALLENGING ASSIGNMENT INCENTIVE
Up to 10% increase to base salary upon hire, promotion or reassignment to a position among the most challenging assignments upon approval by Superintendent or Chief of HR/LR.

The intent with respect to the Mentor/Leadership Coach Increment and the Challenging Assignment Incentive is that these two opportunities are mutually exclusive such that no manager/supervisor may receive both the Increment and the Incentive at the same time.

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-9

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Revised Classified Management Daily Salary Schedule 261 Duty Days

ITEM DESCRIPTION: Included for the Board's consideration and approval is the revised Classified Management Daily Salary Schedule 261 Duty Days.

The reason for bringing the revised salary schedule for approval is to provide a publicly available Board approved salary schedule as required by CalSTRS and CalPERS regulations. Annual Board Approval of employee salary schedules is consistent with best practices and is recommended by the Fresno County Superintendent of Schools.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez,
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

Fresno Unified School District

Classified Management Daily Salary Schedule 2022-23

Effective ~~July 1, 2022~~ July 16, 2022

Management 261 Duty Days*

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5
E33	~~Chief Equity and Access~~	~~E200~~	$639.20	$672.84	$708.26	$745.54	$784.78
	Chief Financial Officer	E260					
	Chief Operational Services	E169					
	Senior Executive	E227					
	Chief Human Resources/Labor Relations	E180					
E32	Chief Engagement and External Partnership Officer	E259	$576.00	$604.80	$635.04	$666.80	$700.14
	Chief Equity and Access	E200					
	Chief Executive	E236					
	Chief Information Officer	E139					
	Chief of Staff (General)	E221					
	Chief Technology Officer	E179					
E31	Assistant Superintendent	E159	$516.59	$542.42	$569.55	$598.02	$627.93
	Assistant Superintendent, Operational Services	E161					
	Deputy Executive (General)	E208					
	Prevention and Intervention Executive	E263					
E30	Executive Officer, District & School Accountability & Improvement	E104	$486.61	$510.94	$536.49	$563.31	$591.48
	Executive Officer, School Leadership	E105					
	Executive Officer (General)	E220					
E29	Administrator (General)	E195	$456.63	$479.45	$503.43	$528.59	$555.03
	Administrator, Human Resources / Labor Relations	E007					
	Executive Director (General)	E210					
	Executive Director, Constituent Services	E003					
	Executive Director, Health Service and Student Health Services	E264					
	Executive Director, Human Resources/Labor Relations	E096					
	Executive Director, Maintenance & Operations	E098					
	Executive Director, Purchasing	E101					
	Executive Director, Research Evaluation and Assessment	E094					
E27	Director (General)	E219	$431.60	$453.16	$475.80	$499.61	$524.60
	Director, Benefits and Risk Management	E066					
	Director, Career Readiness	E067					
	Director, Fiscal Services	E073					

Year 2022-2023
No pay change
Board approved PENDING

Year: Management Salary Schedule 2022-2023
Salary may be pro-rated based on FTE (<1.0 FTE)

Fresno Unified School District

Classified Management Daily Salary Schedule 2022-23

Effective ~~July 1, 2022~~ July 16, 2022

Management 261 Duty Days*

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5
E27	Director, Food Services	E074					
	Director, Human Resources	E079					
	Director, Transportation	E093					
	Director, Risk Management	E272	$431.60	$453.16	$475.80	$499.61	$524.60
E26	Administrative Analyst	E015	$411.03	$431.60	$453.16	$475.80	$499.61
	Administrative Analyst, Research, Evaluation & Assessment	E194					
	Manager III (General)	E223					
	Manager III, Technology Services	E113					
E25	Manager II (General)	E211	$391.46	$411.03	$431.60	$453.16	$475.80
	Manager II, Emergency Planning/Crisis Response	E042					
	Manager II, Grants	E043					
	Manager II, Information Technology	E048					
	Manager II, Maintenance and Operational Services	E119					
	Manager II, Mentoring	E053					
	Manager II, Nurse Educator	E273					
	Manager II, Special Education	E212					
	Manager II, Student Conduct Hearing	E154					
	Manager II, Specialized Programs	E245					
E24	Business Operations Manager (General)	E213	$372.83	$391.46	$411.03	$431.60	$453.16
	Design Lead	E266					
	Manager I, Applications Development and Support	E170					
	Ombudsman	E143					
	Manager I, (General)	E258					
	Manager I, Program	E123					
	Manager Program, Student Wellness	E265					
E23	Executive Assistant to Superintendent	E024	$355.07	$372.83	$391.46	$411.03	$431.60
E22	Analyst II, Budget	E261	$338.17	$355.07	$372.83	$391.46	$410.32
	Coordinator II, Technology Support Services	E172					
	Project Manager (General)	E214					
	Project Manager, Facilities	E122					
	Project Maintenance & Operations Manager	E256					

Year 2022-2023
No pay change
Board approved PENDING

Fresno Unified School District

Classified Management Daily Salary Schedule 2022-23

Effective ~~July 1, 2022~~ July 16, 2022

Management 261 Duty Days*

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5
E21	Analyst II, Accounting/Payroll	E199	$322.06	$338.17	$355.07	$372.83	$391.47
	Analyst II (General)	E198					
	Analyst II, Fiscal Services	E017					
E20	Coordinator I, Benefits	E032	$306.73	$322.06	$338.17	$355.07	$372.83
	Coordinator I, Energy Management	E232					
	Coordinator I, Extended Learning	E274					
E19	Coordinator I, Purchasing	E127	$292.11	$306.73	$322.06	$338.17	$355.07
	Coordinator I, Workers' Compensation	E175					
E18	Analyst I, Budget	E262					
	Analyst I, Workers' Compensation	E019	$278.20	$292.11	$306.73	$322.06	$338.17
	Coordinator I, Warehouse Services	E133					
E17	Analyst I, Fiscal Services	E016	$265.09	$278.20	$292.11	$306.73	$322.06
	Analyst I (General)	E218					
	Analyst I, Information Systems	E197					
	Analyst I, Human Resources	E018					
	District Supervisor II, Food Services	E117					
	Supervisor, Accounting	E267					
	Supervisor, Employee Service Center	E269					
	Supervisor, Environmental Services	E173					
	Supervisor, Payroll	E268					
E16	District Supervisor II, Energy Educator	E135	$252.34	$264.94	$278.20	$292.11	$306.73
E15	Athletic Trainer (Certified)	E229	$240.32	$252.34	$264.94	$278.20	$292.11
	District Supervisor I, Food Services	E116					
	District Supervisor I, Risk Management Claims	E209					
	Nutritionist	E136					
E13	District Supervisor I, Custodial Services	E030	$217.99	$228.88	$240.32	$252.34	$264.94
	District Supervisor I, Graphic Services	E174					

Year 2022-2023
No pay change
Board approved PENDING

Fresno Unified School District

Classified Management Daily Salary Schedule 2022-23

Effective ~~July 1, 2022~~ July 16, 2022

Management 261 Duty Days*

Grade	Job Title	Job Code	Step 1	Step 2	Step 3	Step 4	Step 5

Duty Year of 261 reflects 228 duty days, 13 holidays plus 20 vacation days

A. BONUS ADDITIONS TO PLACEMENT OF BASIC SCHEDULE (ADDITIVE)
Annual $500 for B.A. + 90*
Annual $1000 for M.A. on all classes*
Annual $1500 for Earned Doctorate*
Career Increment of 0.75% each year from the 11th to the 20th year to a total of 7.5% at the 20th year and thereafter.
*Additions are non-cumulative

The intent is that management employees use annual vacation days. If not used, these days vest to the individual. Payment for unused vacation days at the time of separation from FUSD will be calculated using a divisor of 261 for 12-month employees.

B. MENTOR/LEADERSHIP COACH INCREMENT
An increment of 5% to 10% added to step and grade as part of base salary upon approval by Superintendent or Chief of HR/LR

C. CHALLENGING ASSIGNMENT INCENTIVE
Up to 10% increase to base salary upon hire, promotion or reassignment to a position among the most challenging assignments upon approval by Superintendent or Chief of HR/LR.

The intent with respect to the Mentor/Leadership Coach Increment and the Challenging Assignment Incentive is that these two opportunities are mutually exclusive such that no manager/supervisor may receive both the Increment and the Incentive at the same time.

The Mentor/Leadership Coach Increment and the Challenging Assignment Incentive do not fit within the definition of special compensation (2 CCR 571) and therefore are not included in the compensation reported to CalPERS.

Year 2022-2023
No pay change
Board approved PENDING

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-10

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Provisional Internship Permits

ITEM DESCRIPTION: Included for Board consideration and approval are Provisional Internship Permit (PIP) recommendations to rehire or hire upon Board approval.

Site principals recommended to Human Resources to retain or hire the teachers, referenced below, in their positions of 2022/23 due to a shortage of fully credentialed teachers. They are all working toward completing the required exams by the end of 2022/23.

Recommendations for PIP hires:

Name	Site	Subject
Daysi Garcia	Greenberg	Special Education Mild to Moderate Support Needs/Extensive Support Needs
Vittoria Howell	Greenberg	Special Education Mild to Moderate Support Needs/Extensive Support Needs, Early Childhood Special Education
Latoya Judge	Greenberg	Special Education Mild to Moderate Support Needs/Extensive Support Needs, Early Childhood Special Education
Briana Watts	McLane	Special Education Mild to Moderate Support Needs/Extensive Support Needs
Beyra Bautista-Garcia	Norseman	Special Education Deaf and Hard-of-Hearing
Darylwin Wright	Roosevelt	Physical Education
Chloe Campos	Scandinavian	Special Education Mild to Moderate Support Needs/Extensive Support Needs
Tammie Tilghman	Terronez	Multiple Subjects
Stacey Basile	Wilson	Special Education Mild to Moderate Support Needs/Extensive Support Needs

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez,
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-11

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Credentialed Teachers to Coach One Period of Competitive Sport for Physical Education Credit for the 2022/23 School Year per California Education Code 44258.7(b)

ITEM DESCRIPTION: For the Board's consideration and approval is a request to approve credentialed teachers to coach one period of competitive sport for physical education credit. Pursuant to California Education Code 44258.7(b) teachers who hold a teaching credential in a subject or subjects other than physical education may be authorized to coach one period per day in a competitive sport for which students receive physical education credit. The teacher must be a full-time employee of the school district and has completed a minimum of 20 hours of first aid instruction appropriate for the specific sport.

We would like to request the Board to approve the full-time teachers referenced below to coach one period of competitive sport for per credits during the 2022/23 school year.

Name	School	Sport
Allison Mattoz	McLane	Cheer
Mitchel Davis	McLane	Basketball

FINANCIAL SUMMARY: Sufficient funds are available in the sites budget.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-12

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Appointment to the California School Boards Association's Delegate Assembly

ITEM DESCRIPTION: Included in the Board binders is information pertaining to appointment to the California School Boards Association's (CSBA) Delegate Assembly. Each year member boards elect and/or appoint representatives to CSBA's Delegate Assembly. According to CSBA's Bylaws and Standing Rules, districts with an ADA of 30,000 or above, qualify to appoint or reappoint representative(s) from their board to the CSBA's Delegate Assembly for a two-year term ending March 31, 2024.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Ambra O'Connor,
Chief of Staff

DIVISION: Superintendent's Office
PHONE NUMBER: (559) 457-3566

CABINET APPROVAL: Ambra O'Connor,
Chief of Staff

SUPERINTENDENT APPROVAL:

Delegate Assembly
Appointed Biosketch Form for 2022

Deadline: Friday, January 7, 2022

Please submit completed form via e-mail to nominations@csba.org no later than by January 7, 2022. Forms may also be submitted via mail, to CSBA's Executive Office, at 3251 Beacon Blvd., West Sacramento, CA 95691.

Your signature indicates your consent to serve as a Delegate.

Signature: _____ **Date:** August 15, 2022

Name: Claudia Cazares **CSBA Region & subregion #:** 10B

District or COE: Fresno Unified School District **Years on board:** 6

Profession: Community and Housing Development **Contact Number (☒ Cell ☐ Home ☐ Bus.):** 559-790-7688

Primary E-mail: claudia.cazares@fresnounified.org

Are you an incumbent Delegate? ☐ Yes ☑ No **If yes, year you became Delegate:** N/A

Why are you interested in becoming a Delegate? Please describe the skills and experiences you would bring to the Delegate Assembly.

The Delegate Assembly provides a forum for school trustees to build a stronger public education system, build off each other's successes, learn from experienced trustees and consider new ideas from our newer trustees, and I would like to be a part of that group. Over the last 20 years in my profession, and as a trustee, I've become adept at concensus building, program analysis, report writing, and community involvement.

Please describe your activities and involvement on your local board, community, and/or CSBA.

As part of the Board of Trustees, I regularly attend school level functions, meet with staff and parents to obtain feedback, sponsor and participate in events for students, help fund scholarships, and I collaborate with our local City leaders in mutual aid projects. In my community I am part of the Fresno UC Berkeley Alumni chapter, I'm immediate past President of the League of Mexican American Women, I'm a reader at our church mass, and most importantly a PROUD baseball mom.

What do you see as the biggest challenge facing governing boards and how can CSBA help address it?

The state/nation/world has become extremely divisive in our daily lives, and our governing board are seeing the brunt of negative influences towards the trustees. Some of the strife can be cleared up with better messaging regarding board responsibilities across the state, and I think CSBA can help address this challenge.

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-13

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Agreement with M Street Art Gallery

ITEM DESCRIPTION: Included in the board binders is an agreement with M Street Art Gallery. M Street Art Gallery is a premiere fine art gallery in downtown Fresno. The public exhibition will showcase curated art from students in all seven regions of the school district as part of the Relevant Engagement through Art and Literacy (REAL) collaborative. The REAL Collaborative supports teachers and students from grades transitional kindergarten through twelve to provide age-appropriate discussion and research through art and literature within a year-long overarching theme. We have successfully acquired a lease for five small galleries. The gallery will be open starting October 06, 2022, for Art Hop.

FINANCIAL SUMMARY: Sufficient funds in the amount of $26,955 are available in the Arts Education Department budget.

PREPARED BY: Bryan Wells, Assistant Superintendent & Heather Kuyper-McKeithen Manager

DIVISION: Instructional Division
PHONE NUMBER: (559) 457-3731

CABINET APPROVAL: Dr. Natasha Baker, Chief Academic Officer

SUPERINTENDENT APPROVAL:

FEDERAL FUNDING WILL NOT BE USED

Fresno Unified School District
Achieving our Greatest Potential!

Fresno Unified School District
Contract Routing Form

Completed independent contract agreement must be attached

FFDA Properties, dba M Street Arts Compl	1396 W. Herndon Ave, #101, Fresno, CA 93711
Vendor Name	***Address***
559-319-8641	Danielle Falaschi
Phone Number	***Vendor Contact***
From: 10/1/2022	**Through:** 6/30/2023
Term (Duration)	
FUSD Contract Administrator:	
Hether Kuyper-McKeithen	Arts Education Department 559-248-7173
Name	*Site/ Dept* *Telephone number*

Budget (Fund-Unit-Dept.-Activity-Object) 030-0727-0169-5600-111S-1000

Annual Cost $ 26,955.00 (Contract will not be authorized to exceed this amount ☑

Fingerprint Requirements: *All individuals providing services under this contract are in compliance with the requirements of the "Michelle Montoya" Act, as required therein.* *Yes* ☐ *No* ☑

Scope of Work Summary:
The Arts Education Department will lease Gallery Studio 4A, 5A, 6A, Studio 14 and Studio 7 at the M Street Arts Complex for nine months in the 2022/23 school year for student art exhibits. Plans for this space also include instruction in visual arts and curating from teachers and guest artists. Students at various grades from Early learning through high school across the distrct are participating in this collaborative project. Student artwork will be on display in the gallery and students in this collaborative project will participate in ArtHop events throughout the year. Gallery space will total 1030 square feet located in the M Street Arts Complex at the cornor of M Street and Tulomne. Monthly lease cost is $2,995 per month for 9 months. The lease agreement will commence on October 1, 2022 and expire June 30, 2023.

Please indicate where the work will be performed: Choose Best Description

Date Item is to appear on **Board of Education Agenda:** 09/07/22 ***Will this contract be submitted with Bundled Contracts?*** No
(Contracts of $15,000.00 or more)

Reviewed & approved by **Cabinet Level Officer:**
9/9/22 — Aug 24, 2022
Signed *Date*

Reviewed & approved by **Risk Management, or Exec. Dir. of Purchasing:**
Signed — 08/24/2022 *Date*

Please return signed contract to:
Yolanda Serna — Arts Education/Tehipite Room D2
Name *Department*

STANDARD MULTI-TENANT OFFICE LEASE - GROSS
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. **Basic Provisions ("Basic Provisions")**

1.1 **Parties:** This Lease ("**Lease**"), dated for reference purposes only October 1,2022 is made by and between FFDA Properties, LLC dba M Street Arts Complex **Lessor** (**Lessor**) and Fresno Unified School District Visual & Performing Arts ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain portion of the Project (as defined below), known as Suite Numbers(s) 4A,5A,6A, studio 14 and Studio 7 floor(s), consisting of approximately 1030 rentable square feet ("**Premises**"). The Premises are located at 1419 M Street in the City of Fresno, County of Fresno, State of California, with zip code 93721. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**". The Project consists of approximately 13189 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** N/A unreserved and N/A reserved vehicle parking spaces at a monthly cost of $ N/A per unreserved space and $ N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** 0 years and 9 months ("Original Term") commencing October 1,2022 ("**Commencement Date**") and ending June 30,2023. ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** per month ("**Base Rent**"), payable on the First (1st) day of each month commencing $2995.00 (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Addendum.

1.6 **Lessee's Share of Operating Expense Increase:** percent (N/A %) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** 2995.00 for the period 10/1/2022-6/30/2023

(b) **Security Deposit:** $ waived ("Security Deposit"). (See also Paragraph 5)

(c) **Parking:** $ 0.00 for the period N/A.

(d) **Other:** $

(e) **Total Due Upon Execution of this Lease:** $28955.00

1.8 **Agreed Use** Visual and Performing Arts Program (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2022-2023. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

~~1.10 **Real Estate Brokers:** (See also Paragraph 15)~~

~~(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):~~

~~☐ _____ represents Lessor exclusively ("Lessor's Broker").~~

~~☐ _____ represents Lessee exclusively ("Lessee's Broker") or~~

~~☐ _____ represents both Lessor and Lessee ("Dual Agency").~~

~~(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____% of the total Base Rent for the brokerage services rendered by the Brokers.)~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by Fresno Unified School District Visual & Performing Arts and Heather Kuyper-McKelthen agent for FUSD ("**Guarantor**"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 24/7 a.m. to 24/7 p.m., Mondays through Fridays (except Building Holidays) and 24/7 a.m. to 24/7 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and _____.

INITIALS INITIALS

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following:

X☐ Janitorial services Common Areas

X☐ Electricity: Electric or Gas Utility services for the Lessee's unit

X☐ Other, (specify): WIFI

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☐ an Addendum consisting of Paragraphs _____ through _____;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☐ a janitorial schedule;

☐ other (specify): Per original contract.

---

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (**"HVAC"**), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law.

2.3 **Compliance.** Lessor warrants to the best of its actual knowledge, and without implying a duty or the conduct of an inspection, that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances (**"Applicable Requirements"**) in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise herein, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, investigate and, if necessary and required, rectify the same." If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and newly enacted or promulgated Applicable Requirements, and not to Applicable Requirements in existence as of the Commencement Date." If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor (and by Brokers if same were involved in this leasing transaction) to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 **Common Areas - Definition.** The term **"Common Areas"** is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the

Common Areas, Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors, and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available.

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas.

(d) To add additional buildings and improvements to the Common Areas.

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10-day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of Insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur, but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the **"Operating Expense Increase"**, in accordance with the following provisions:

(a) **"Base Year"** is as specified in Paragraph 1.9.

(b) **"Comparison Year"** is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such Increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as **"Operating Expenses"**:

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections.

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered.

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery

by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashiers check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, will not affect the exterior appearance of the Building and will not violate or adversely affect any exclusives or any provisions of this Lease or the tenant mix of the Building and Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under

any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts, or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements relating to or triggered by that Reportable Use. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) the addition of insurance coverage or increase in the modification of existing insurance coverage, and increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and remedial actions reasonably recommended by Lessor or any governmental entity, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor and its successors and assigns, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessor, its principals, officers, employees, any other agents, and lenders and ground lessor, if any, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the ~~gross~~ negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall

make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination. Lessee is required to provide Lessor a written thirty (30) day notice of vacate and lease termination prior to lease ending date and same thirty (30) day written notice of vacate applies if Lessee is on a hold over month to month lease agreement.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with at Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's **"Lender"** (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any improvements with the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses). 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the fullest extent allowed by law, Lessee expressly and irrevocably waives the benefit of any statue, regulation, ordinance or other law now or hereafter in effect to the extent it is inconsistent with any of the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the

Premises. The term **"Alterations"** shall mean any modification of the Improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed $2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make, and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that maybe rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender, Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the Improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. 'Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 25 below.

8. Insurance; Indemnity.

8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit [illegible] than $1,000,000 per occurrence with an annual aggregate of not le[illegible]than [illegible] endorsement at least as broa[illegible] Insurance Service Organization's "Additional Insured-Managers or Lessor's of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations but shall include coverage for liability assumed under this Lease as an **"insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more then the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (**"Rental Value Insurance"**). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12-month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property; Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee

Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a 'General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of 'Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or insurance binders' evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure, and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein and which are actually so insured against at the time of the loss or damage. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's ~~gross~~ negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its principals, officers, any other agents, Lessor's master or ground lessor, partners and Lenders, (collectively the "Indemnified Parties" and each an "Indemnified Party"), from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to the Indemnified Party and the Indemnified Party shall cooperate with Lessee in such defense. The Indemnified Party need not have first paid any such claim in order to be defended or and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its principals, officers and other agents, neither Lessor nor its principals, officers or any other agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, Whether such damage or injury is caused by or results from fire, steam, electricity. gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its principals, officers or any other agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

~~8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risks and expenses that Lessor will incur by reason of Lessee's failure to maintain the required insurance, but which cannot be determined and calculated with reasonable certainty.~~

~~Such increase in Base Rent shall in no event constitute a release or waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance or perform any other obligation required by this Lease or by law, nor will it prevent in any way Lessor's exercise of any of the other rights and remedies granted hereunder or by law for losses, damages and expenses caused by Lessee's acts or omissions, nor will it relieve Lessee of its obligation to maintain the insurance specified in this Lease.~~

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the Improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the Improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shal lcontinue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease. Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by

the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 **Definitions.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned

In the assessors work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment, and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third-party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39?)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a). (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach K Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate, and Lessee shall immediately surrender possession to Lessor. In such event Lessor

shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. K a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for nonscheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to nonscheduled payments. The interest ("**interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"**), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third-party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as **"Responding Party"**) shall within 10 days after written notice from the other Party (the **"Requesting Party"**) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current **"Estoppel Certificate"** form published by the AIRCommercial Real

Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word • days as used in this Lease shall mean and refer to calendar days.

20. ~~**Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.~~

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises, Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified, or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown or if delivery is refused, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lesser or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advise is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

INITIALS

INITIALS

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease. Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the

erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary 'For Lease" signs during the last 6 months of the term hereof.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply.

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or

completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises. Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises, by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b(If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☐ is not attached to this Lease.

48. **Americans with Disabilities Act**. To Lessor's knowledge, the Premises has not undergone inspection by a Certified Access Specialist (CASp).

A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law. Although state llaw does not require a CASp inspection of the Premises, the commercial property owner or Lessor may not prohibit the Lessee or tenant from obtaining a CASp Inspection of the Premises for the occupancy or potential occupancy of the Lessee or tenant, if requested by the Lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the ocst of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

Lessor makes no representation to Lessee concerning whether or not the Premises complies with all or any state or federal laws relating to disability access. Should Lessee wish to obtain a CASp Inspection for the Premises, or shot it be claimed or determined that the Premises does not or di not comply with any state or federal laws relating to disability access during the term of the Lease, Lessee shall, at Lessee's sole expense, make or cause to be made any necessary inspections, repairs and modifications to the Premises to cure the non-compliance and Lessee shall defend, indemnify and save Lessor harmless from all claims, demands, actions, judgements, awards, expenses, losses and liabilities relating to or arising out of such non-compliance, inspections, repairs or modifications.

[SINGATURE PAGE TO FOLLOW]

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS

INITIALS

INITIALS

EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICEOF COUNSELAS TOTHE LEGALAND TAXCONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:	Executed at:
On	On
By LESSOR:	By LESSEE:
By:	By:
Name Printed:	Name Printed:
Title:	Title:
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address:	Address:
Telephone: ( )	Telephone: ( )
Facsimile: ( )	Facsimile: ( )
Federal ID No.:	Federal ID No.:
LESSOR'S BROKER:	LESSEE'S BROKER:
Attn:	Attn:
Address:	Address:
Telephone: ( )	Telephone: ( )
Facsimile: ( )	Facsimile: ( )

08/24/2022

Approved as to form:

INITIALS

INITIALS

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-14

AGENDA SECTION: A - Consent
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Agreement with The Law Office of Mark T. Harris

ITEM DESCRIPTION: Included in the Board binders is an agreement with the Law Office of Mark T. Harris to provide an independent assessment of matters which arise from within the district pertaining to race; ethnicity; national origin; gender; and sexual orientation involving employees and students. Mr. Harris will work in collaboration with the district's current team of attorneys and investigators, in the crafting of litigation strategy and employee discipline where warranted.

FINANCIAL SUMMARY: Sufficient funds in the amount of $210,000 are available in the Equity & Access budget.

PREPARED BY: Ambra O'Connor,
Chief of Staff

DIVISION: Superintendent's Office
PHONE NUMBER: (559) 457-3838

CABINET APPROVAL: Ambra O'Connor,
Chief of Staff

SUPERINTENDENT APPROVAL:

FEDERAL FUNDING WILL NOT BE USED

Fresno Unified School District
Achieving our Greatest Potential!

Fresno Unified School District
Contract Routing Form

Completed independent contract agreement must be attached

The Law Offices of Mark T. Harris, ESQ	38 Still Beach Court, Sacramento, CA 95831
Vendor Name	***Address***
866-600-3742	Mark T. Harris
Phone Number	***Vendor Contact***

From: 10/1/2022 **Through:** 6/30/2024

Term (Duration)

FUSD Contract Administrator:

Ambra O'Connor	Superintendent's Office	5594573723
Name	*Site/ Dept*	*Telephone number*

***Budget** (Fund-Unit-Dept.-Activity-Object)* 030-0679-0852-1110-2100-5899

Annual Cost $ 210,000.00 (Contract will not be authorized to exceed this amount w/c

Fingerprint Requirements: *All individuals providing services under this contract are in compliance with the requirements of the "Michelle Montoya" Act, as required therein.* ***Yes*** ☐ ***No*** ☑

Scope of Work Summary:

Vendor will work in collaboration with District leaders, the District's current team of attorneys and investigators to provide an independent assessment of matters which arise from within the District pertaining to race; ethnicity; national origin; gender; and sexual orientation involving employees and students.

Please indicate where the work will be performed: Work to be performed remotely in the st.

Date Item is to appear on **Board of Education Agenda:** 08/28/22 ***Will this contract be submitted with Bundled Contracts?*** No
(Contracts of $15,000.00 or more)

Reviewed & approved by **Cabinet Level Officer:**

Signed *Date*

Reviewed & approved by **Risk Management, or Exec. Dir. of Purchasing:**

Ann Loorz (Sep 15, 2022 14:22 PDT) 09/15/2022

Signed *Date*

Please return signed contract to:

Lucille Molano	Superintendent
Name	*Department*

Fresno Unified School District
Independent Contractor Services Agreement

GENERAL INFORMATION

School/Department Budget: 030-0679-0852-1110-2100-5899

District Contact Person: Ambra O'Connor

Budget Manager Approval: _____

Contractor's Vendor Name: The Law Offices of Mark T. Harris, ESQ

Contractor's Contact Person: Mark T. Harris

Contractor's Title:

Contractor's Telephone Number: **866-600-3742**

Contractor's E-mail:

Contractor's Address: 38 Still Beach Court, Sacramento, CA 95831

This Independent Contractor Services Agreement is made and entered into effective 10/1/2022 (the "Effective Date") by and between the Fresno Unified School District ("District") and ("Contractor"). The Law Offices of Mark T. Harris. I

1. Contractor Services. Contractor agrees to provide

Vendor will work in collaboration with District leaders, the District's current team of attorneys and investigators to provide an independent assessment of matters which arise from within the District pertaining to race; ethnicity; national origin; gender; and sexual orientation involving employees and students.

2. Contractor Qualifications. Contractor represents that it has in effect all licenses, permissions and has otherwise all legal qualifications to perform this Agreement.

3. Term. This Agreement shall begin on 10/1/2022 , and shall terminate on **6/30/2024** . There shall be no extension of the term of the agreement without express written consent from all parties.

4. Payment. District agrees to pay Contractor at following rate of $ 210,00(per , Not to exceed $ 210,000.00. Checks will be made payable to **The Law Offices of Mark T. Harris, ESQ** . Payment shall be limited to amount written in this **paragraph, unless specifically indicated in Paragraph 5. District agrees to pay Contractor within thirty (30) days of receipt** of detailed invoice.

5. Incidental Expenses. ☐ **Yes** (See below) ☑ **No**, Vendor initial here MH

   a. Lodging _____ Actual cost of single occupancy. Not to exceed $100 per night. ***Receipt Required.***

   b. Meals _____ Reimbursement limited to actual cost up to the following rates: Breakfast $12.20, Lunch $18.30, Dinner $30.50. ***Receipt Required.***

   c. Travel _____ Actual cost by common carrier. Private car expenses will be reimbursed at the current standard business IRS mileage rate.

   d. Supplies _____ As negotiated with school/department contracting for service.

   e. Total Estimated Cost (Sum of paragraphs 4 and 5a – d): $ 210,000.0(

   f. Other _____

6. Employment. Are you a current FUSD employee? ☐ Yes ☑ No

7. CalPERS & CalSTRS. Are you a CalPERS or CalSTRS retiree? ☐ Yes ☑ No

8. California Residency. Contractor is a resident of the state of California: ☐ Yes ☑ No

9. Report Fraud, Waste and Abuse. By calling the Anti-Fraud Hotline, (559) 325-3200, or by completing the fraud, waste or abuse reporting form online at: http://www.ppcpas.com/fresno-unified-fraud-alert. The anti-fraud waste or abuse reporting hotline is available to report alleged fraud in the district. The responsibility for monitoring the hotline rests with the internal auditor for Fresno Unified School District, Price, Page & Company. A report may be made anonymously.

10. Conflict of Interest. In consideration of the Districts Conflict of Interest Code, Contractor affirms they do not have, nor does the Contractor anticipate having any interest in real property, investments, business interest in or income from sources which would provide Contractor, his/her spouse or minor child(ren) with personal financial gain as a result of any recommendation, advice or any other action taken by Contractor during the rendition of services under this Agreement.

Contractor's initials MH District's initials AO AL

11. Anti-discrimination. Fresno Unified School District prohibits discrimination, harassment, intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age, creed, religion, political affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, medical information, military veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment. If you believe you, or your student, have been subjected to discrimination, harassment, intimidation, or bullying you should contact your school site principal and/or the District's Chief Compliance and Title IX Officer David Chavez, by phone at 559-457-3500, by email at David.Chavez@fresnounified.org, or in person at 2309 Tulare Street Fresno, CA 93721.

12. Termination of Agreement. Either District or Contractor may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice. In the event of early termination, Contractor shall be paid for satisfactory work

performed to the date of termination. The District may then proceed with the work in any manner the District deems proper.

Notwithstanding the expiration or termination of this Agreement for any reason (a) any provision of this Agreement that imposes or contemplates continuing obligations on a Party shall survive the expiration or termination of this Agreement, including without limitation, the rights and duties under Paragraphs 12, 13, 15,and 17; and (b) all undisputed fees due and payable hereunder through the termination date in accordance with Paragraphs 4 and 5.

13. Confidential Information

a. For the purposes of this Agreement "Confidential Information" includes any written or oral information or data, disclosed by either Party to the other, which may include, without limitation, information relating to technical, financial, personnel, personal employee information, the network, corporate, administration, plan design, benefits or contractual affairs of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

b. Contractor hereby agrees that it shall not disclose Confidential Information, and any materials, discussions, or other communications concerning Confidential Information to any person or entity, except to its own employees, contractor personnel, and to its attorneys, accountants, consultants and other professional advisors having a "need to know," and who are themselves bound by similar nondisclosure restrictions (collectively, "Representatives"). If Contractor becomes aware of any disclosure or use not in compliance with this Agreement, Contractor shall notify the District in writing within three (3) business days. Contractor shall use at least the same degree of care in safeguarding Confidential Information as it uses in safeguarding its own confidential information. Representatives shall be bound to comply with all terms of this Paragraph
13.B. Upon the request of the District, Contractor shall provide a written acknowledgment from each of its Representatives that said Representative is bound by the terms of this Paragraph 13.B.

c. Contractor's obligation under this Agreement to not disclose Confidential Information shall not apply to information that: (a) becomes generally available to the public other than as the result of unauthorized disclosure by Contractor or a third party; (b) is independently developed by Contractor without the aid, application or use of Confidential Information; or (c) was received by Contractor on a non-confidential basis prior to receipt from the District or from a third-party lawfully possessing and lawfully entitled to disclose such information.

d Disclosure of Confidential Information shall not be precluded if such disclosure is: (a) required pursuant to a valid court order; or (b) in the opinion of legal counsel for Contractor, is otherwise required by law, provided that in either circumstance:

i. Contractor shall furnish the District with a copy of the demand, summons, subpoena or other legal process to compel such disclosure;

ii. Contractor shall give the District reasonable prior notice of its intention to disclose Confidential Information in order to allow the District an opportunity to seek appropriate protection; and

iii. Contractor shall take all reasonable steps including, without limitation, the pursuit of a protective order, to restrict the disclosure of Confidential Information to the greatest extent possible.

e. All Confidential Information provided by the District to Contractor is and shall forever remain the sole and exclusive property of the District. By granting access to Confidential Information, the District does not grant any express or implied right to Contractor to use, publish or disclose any Confidential Information. After its review of the Confidential Information Contractor will return to the District all Confidential Information disclosed to it (including copies or summaries of Confidential Information), or with the District's permission destroy the Confidential Information and certify in writing that it has been destroyed.

14. Injunctive Relief. Each Party acknowledges that a breach or threatened breach of this Agreement may cause immediate and irreparable harm to the District and that, to protect against such harm, the District may seek from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit any threatened disclosure

or misuse of the District's Confidential Information. Such an action for a restraining order or injunction is in addition to and does not limit all other remedies provided by law or in equity or by agreement between the Parties.

15. Indemnification and Hold Harmless. To the fullest extent allowed by law, the Contractor shall defend, indemnify and hold District, its agents, employees, Board of Trustees, members of the Board of Trustees, officials, officers, volunteers, and representatives ("Indemnities") free and harmless from any and all claims, demands, negligence (including the active or passive negligence of Indemnities, regardless of whether sole or otherwise, as allowed by law), causes of action, costs, expenses, liabilities, losses, damages or injuries, fines, penalties in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively "Loss") to the extent arising out of or incident to: 1) the performance or breach of any of the terms and conditions of the contract (including but not limited to) the Contractor's use of the site; or 2) any acts, omissions, negligence, in connection with the performance of Services or otherwise arising from this Contract ("Indemnification"); or 3) the willful misconduct of the Contractor or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. The Contractor's Indemnification includes, but is not limited to, the payment of all damages and attorney's fees, fines, penalties and other related costs and expenses.

    a. The Contractor's defense obligations (with counsel approved by District), shall arise immediately upon tender of any of the Indemnities, and the defense shall be paid at Contractor's own cost, expense and risk, for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against any of the Indemnities, notwithstanding whether liability is, can be or has yet been established.

    b. The Contractor shall pay and satisfy any judgment, award or decree that may be rendered against any of the Indemnities, in any such suit, action or other legal proceeding. The Contractor shall reimburse Indemnities, and each of them, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

    c. Acceptance of insurance certificates and endorsements required under the contract does not relieve the Contractor from liability under this indemnification and hold harmless clause. The requirements of this Section (Indemnification and Hold Harmless) shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. Insurance. Without limiting "Contractor" indemnification, it is agreed that "Contractor" shall secure and maintain in force during the term of this Agreement a **Commercial General Liability** policy (Contractual liability included) utilizing an occurrence policy form, with limits of not less than two million ($2,000,000) dollars per occurrence, four million ($4,000,000) annual aggregate limit. **Business automobile Liability** Insurance shall be maintained for owned, scheduled, non-owned or hired automobiles with a combined single limit not less than two million ($2,000,000) dollars per occurrence. In the event "Contractor" is working with students individually or providing professional services to students, "Contractor" shall maintain a policy providing coverage for sexual molestation and/or abuse claims. In the event that "Contractor's" Commercial General liability policy excludes coverage for sexual molestation and/or abuse claims shall be required to procure a separate or supplemental policy providing such coverage. The limits of coverage for the **abuse and molestation policy** shall be not less than $2,000,000 per claim and $4,000,000 aggregate. If any of the required policies provide coverage on a claims-made basis then the following shall apply; 1) The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work; (3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. Self-insured retentions must be declared to and approved by District. The District may require "Contractor" to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the District.

The District shall be named as an additional insured on the policies by separate endorsement. A Certificate of Insurance and endorsements shall be **attached to this Agreement as proof of insurance.** The "Contractor" policy shall provide that it is primary such that insurance maintained by the District, if any, shall be excess and not co-primary.

17. Independent Contractor Status. While engaged in carrying out the terms and conditions of the contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District.

18. Workers' Compensation Insurance. Contractor agrees to provide all necessary workers' compensation insurance for Contractor's employees, if any, at Contractor's own cost and expense.

19. Fingerprinting Requirements. Contractor hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the District's pupils. The Contractor shall also ensure that its consultants on the Project also comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the Contractor and its consultants, prior to any of the Contractor 's employees, or those of any other consultants, coming into contact with the District's pupils submit through the DISTRICT fingerprints to the Department of Justice (DOJ) for the monitoring and supervision of employee(s) and/or affiliated constituents. Contractor will not begin work on the Project site until obtaining a DOJ cleared status through the DISTRICT. Contractor further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 et seq., and will comply with any such requirements, including having Consultant certifies Consultants certify that none of these employees and/or affiliated constituent(s) will have been convicted of a felony as defined in Education Code section 45122.1."Fingerprinting Requirements," is expressly understood and agreed to by the parties hereto:

Contractor's initials MMH District's initials AO AL

20. Taxes. Contractor agrees that Contractor has no entitlement to any future work from the District or to any employment or fringe benefits from the District. Payments to the contractor pursuant to this Agreement will be reported to Federal and State taxing authorities as required. District will not withhold any money from compensation payable to Contractor. District will not withhold FICA (Social Security), state or federal unemployment insurance contributions, state or federal income tax or disability insurance. Contractor is independently responsible for the payment of all applicable taxes.

21. Assignment. The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the District.

22. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the contractor and the District and their respective successors and assigns.

23. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

24. Waiver and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate Superior court in Fresno, California.

26. Attorney's Fees. The non-prevailing party in any dispute under this Agreement shall pay all costs and expenses, including expert witness fees and attorney's fees, incurred by the prevailing party in resolving such dispute.

27. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the company or to an officer of the corporation for whom it was intended, or if delivered to or sent by registered or certified mail to the last business address known to the person who gives the notice.

District:

Ann Loorz
Purchasing Department
Fresno Unified School
District 4498 N. Brawley
Avenue Fresno, CA 93722

Contractor: The Law Offices of Mark T. Harris, ESQ

Name: Mark T. Harris

Address:

38 Still Beach Court
Sacramento, CA 95831

c: Risk Management Fresno
Unified School District 2309
Tulare Street
Fresno, CA 93721

28. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor agrees that it shall comply with all legal requirements for the performance of its duties under this agreement and that failure to do shall constitute material breach.

29. Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

30. Construction. The rule of construction that any ambiguity in an agreement be construed against the drafter of such agreement shall not apply to this Agreement.

31. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

32. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

33. Board Approval. For contracts in excess of $15,000.00, the effectiveness of this Agreement is contingent upon the approval of the Fresno Unified School District Board of Education.

Executed at Fresno, California, on the date and year first written above.

DISTRICT

Fresno Unified School District

_____

Santino Danisi, Chief Financial Officer

_____

Date

CONTRACTOR

The Law Offices of Mark T. Harris, ESQ

_____

Name: Mark T. Harris ***, Title:***

SEPTEMBER 14, 2022

Date

Approved As To Form:

Ann Loorz (Sep 15, 2022 14:22 PDT)

_____

Risk Management or Purchasing

09/15/2022

_____

Date

MARK T. HARRIS, ESQ

Professor and Attorney at Law

38 Still Beach Court

Sacramento, CA. 95831

(866) 600-3742 (office)

(916) 396-5534 (cell)

ucmercedlaw@gmail.com

MEMORANDUM OF UNDERSTANDING

Between The Law Offices of Mark T. Harris and the Fresno Unified School District

Recitals

Whereas "the Law Offices of Mark T. Harris ("Party A," or "Harris") is a full service law firm practicing in the areas of employment law; civil rights; and business litigation and the Fresno Unified School District ("Party B" or "the District") is a school district located in Fresno, California with an ongoing need for legal counsel and representation in the professional areas where Harris has established expertise; and

Whereas Harris agrees to provide the District with the benefit of its legal guidance in the role of being retained as the District's "Diversity, Equity and Inclusion Monitor" ("DEI Monitor") and

Whereas Harris agrees to work, in collaboration with the District's current team of attorneys and investigators, in the crafting of litigation strategy and employee discipline where warranted for behavior deemed to be violative of state law or the District's employment policies and procedures;

Whereas Harris agrees to provide an independent assessment of matters which arise from within the District pertaining to race; ethnicity; national origin; gender; and sexual orientation involving employees and students.

Term:

October 1, 2022 through June 30, 2024

Fees and Expenses:

Harris will be paid by District a sum of two hundred and ten thousand dollars ($210,000) which is to be paid in increments, on a quarterly basis, commencing on October 1, 2022. Each payment will be in the amount of $30,000, representing payments covering 21 months of professional services by Party A at a fee of $10,000 each month, paid quarterly.

Harris will bear all expenses associated with its performance including normal business expenses inclusive of travel.

Harris will meet all licensing and regulatory requirements commensurate with its professional responsibilities.

Governing Law:

This Agreement is governed by California law and at all times Parties A and B agree to comply with all relevant state and federal laws.

Termination:

Either Party may terminate this Agreement on an annual basis by providing the other Party with its intent to terminate the Agreement by December of each year.

If neither Party has informed the other of its intent to terminate this Agreement by December, this Agreement will renew and remain in effect for each calendar year (January-December) until terminated.

Mark T. Harris, Esq.

Fresno Unified School District
Santino Danisi, Chief Financial Officer
Date:

Law Offices of Mark T. Harris
By: Mark T. Harris, Owner
Date:

Approved as to Form:

Ann Loorz (Sep 15, 2022 14:22 PDT)

Ann Loorz, Executive Director Purchasing

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-15

(A - Consent, B - Discussion, C - Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Agreement with Leadership Associates

ITEM DESCRIPTION: Included in the Board binders is an agreement with Leadership Associates to conduct an executive search for the position of Chief Equity and Access.

The agreement with Leadership Associates will include the following:

- All meetings with the Superintendent and designated staff as needed
- Publishing and announcement of position description
- Acceptance of applications and responding to all inquiries regarding position
- Advertisement and consultant expenses
- Recruitment of candidates and extensive background checks
- Supporting the Superintendent for the interviews, including draft questions and final selection of candidate
- Contacting candidates that did not get an interview
- Acting as an advisor to the Superintendent

The contract is to perform the above services beginning September 29, 2022. The cost to the district is $22,500.

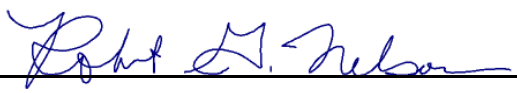
FINANCIAL SUMMARY: Sufficient funds in the amount of $22,500 are available in the Human Resources budget.

PREPARED BY: Manjit Atwal,
Executive Director

DIVISION: Human Resources
PHONE NUMBER: (559) 457-3548

CABINET APPROVAL: David Chavez,
Chief of Human Resources/Labor Relations

SUPERINTENDENT APPROVAL:



FEDERAL FUNDING WILL NOT BE USED

Fresno Unified School District
Achieving our Greatest Potential!

Fresno Unified School District
Contract Routing Form

Completed vendor's agreement must be attached

Leadership Associates	449 W. Foothill Blvd.,#427, Glendora, CA 91741
Vendor Name	***Address***
(916)6204951	Dennis Smith, Ed.D.
Phone Number	***Vendor Contact***
From: 9/29/2022	**Through:** 3/29/2023
Term (Duration)	
FUSD Contract Administrator:	
Manjit Atwal	Human Resources
Name	*Site/ Dept* *Telephone number*

***Budget** (Fund-Unit-Dept.-Activity-Object)* 030-0720-0930-0000-7200-5899

Annual Cost $ 22,500.00 Please choose an option

Fingerprint Requirements: *All individuals providing services under this contract are in compliance with the requirements of the "Michelle Montoya" Act, as required therein.* ***Yes*** ☐ ***No*** ☑

Scope of Work Summary:

The Contractor will conduct an Executive Search for the Position of Chief, Equity & Access, a delineated in the attached Service Agreement Summary

Please indicate where the work will be performed: Choose Best Description

Date Item is to appear on **Board of Education Agenda:** 09/28/22 *(Contracts of $15,000.00 or more)* ***Will this contract be submitted with Bundled Contracts?*** No

Reviewed & approved by **Cabinet Level Officer:** *Signed* 9/26/2022 *Date*

Reviewed & approved by **Risk Management, or Exec. Dir. of Purchasing:** *Signed* 09/26/2022 *Date*

Please return signed contract to:

Susan Monasterio	Human Resources
Name	*Department*

LEADERSHIP ASSOCIATES
California's Premier Executive Search & Leadership Development Firm

SERVICE AGREEMENT

LEADERSHIP ASSOCIATES
www.leadershipassociates.org
449 W. Foothill Blvd., #427
Glendora, CA 91741
(916) 520-4951

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made this **29th day of September 2022** between LEADERSHIP ASSOCIATES, hereinafter called the Contractor, and **FRESNO UNIFIED SCHOOL DISTRICT,** hereinafter called the District.

The Contractor agrees to perform services for the District as follows:

The Contractor will conduct an executive search as delineated in the attached Summary of Services. Position: Chief, Equity and Access

The District agrees to pay the Contractor **TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS ($22,500)** for services provided. Payment is to take place in two increments: **(1) $11,250** upon completion of stakeholder input, and **(2), $11,250** upon selection of a finalist. If stakeholder input is not part of the process, an invoice for the full amount will be submitted upon selection of a finalist. The Contractor will submit invoices to the District for each of the payment increments. Payments are due within 30 days of receipt of invoice.

Remittance payable/forwarded to: Leadership Associates

Attn: Betty Hall
449 W. Foothill Blvd., #427
Glendora, CA 91741

The Contractor is to perform the above services beginning September 29, 2022.

Contractor agrees to hold harmless and indemnify the District, its officers, agents, and employees with respect to all damages, costs, expenses or claims, in law or in equity, arising or asserted because of injuries to or death of person or damage to, destruction, loss, or theft of property arising out of faulty performance of the services to be performed by Contractor hereunder.

It is expressly understood and agreed to by both parties hereto that the Contractor, while engaged in carrying out and complying with any of the terms and conditions of this contract, is an independent contractor and is not an officer, agent, or employee of the aforesaid District. Either party may terminate this agreement by providing the other party with ten (10) days written notice. Upon such termination, fees will be determined on a pro rata basis.

Leadership Associates does not participate in a California public pension system. Leadership Associates and the District understand that the work/services provided should not be considered creditable toward the STRS earnings limit as the work is not normally performed by employees of the District and requires less than 24 months (496 business days). REF. CA Education Code § 26135.7 (2014)

CONTRACTOR:	DISTRICT:
LEADERSHIP ASSOCIATES	FRESNO UNIFIED SCHOOL DISTRICT
Taxpayer ID#: 68-0383653	
By: Dennis Smith	By:
Name: Dennis Smith, Ed.D.	Name: Santino Danisi
Title: Leadership Associates	Title: Chief Financial Officer
Date:	Date:

09/26/2022
Approve as to Form

LEADERSHIP ASSOCIATES
California's Premier Executive Search & Leadership Development Firm

FEE AND SUMMARY OF SERVICES

FRESNO UNIFIED SCHOOL DISTRICT
POSITION: ASSISTANT SUPERINTENDENT, HUMAN RESOURCES

TOTAL FEE TO CONDUCT SEARCH: $22,500 (all-inclusive)

This fee includes:

- All meetings with the Superintendent and designated staff as needed
- Publishing and announcement of position description
- Acceptance of applications and responding to all inquiries regarding position
- Advertisement and consultant expenses
- Recruitment of candidates and extensive background checks
- Supporting the Superintendent for the interviews, including draft questions and final selection of candidate
- Contacting candidates that did not get an interview
- Acting as an advisor to the Superintendent

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022 **AGENDA ITEM A-16**

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Award of Request For Proposal 22-07, Cleaning Supplies, Equipment and Custodial Related Products, Services and Solutions

ITEM DESCRIPTION: Included for Board consideration and approval is information on Request for Proposal (RFP) 22-07, for district-wide cleaning supplies; and equipment and custodial related products, services and solutions. As the lead agency for this Omnia Partners RFP, the Fresno Unified School District will establish a nationwide master agreement that can be used by more than 50,000 public agencies. Omnia Partners is a nonprofit government purchasing cooperative that reduces the cost of goods and services for participating agencies by aggregating purchasing power nationwide. Lead public agencies competitively solicit contracts which Omnia Partners makes available to agencies and nonprofits nationwide.

Objectives of the RFP include: The ability to provide a comprehensive competitively solicited master agreement offering products and services to participating public agencies; achieve cost savings through a single competitive solicitation process that eliminates the need for multiple proposals; combine the volumes of participating public agencies to achieve cost effective pricing; and to provide environmentally responsible products and services.

The Request for Proposals was lawfully advertised on May 22, 2022, and June 02, 2022. Notifications were sent to sixty-three vendors, and the district received six responses. The evaluation panel was comprised of buyers and managers from multiple school districts. Scoring criteria included experience servicing school districts and higher education institutions; product line availability and pricing.

This is a three-year contract commencing November 01, 2022. Suppliers are required to pay an administrative fee of two 2% of the contract sales under the master agreement. The fees received by Fresno Unified for being the lead agency was $184,136 in 2021 and $204,930 in 2020. The evaluation panel recommend approval of the following best value vendor:

HD Supply Facilities Maintenance, Ltd. fka Home Depot Pro Institutional (Atlanta, Georgia) est. $1,500,000.

The RFP, responses and scoring matrix are available for review in the Purchasing Department.

FINANCIAL SUMMARY: Sufficient funds in the amount of $1,500,000 are available in the Maintenance and Operations Fund.

PREPARED BY: Ann Loorz,
Executive Director

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor
Management Officer

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

SUPERINTENDENT APPROVAL:

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-17

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Approve
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Approve Use of Individual Piggyback Contracts

ITEM DESCRIPTION: Included in the Board binders and recommended for approval is a list of five piggyback contracts for use during 2022/23 for efficient and cost-effective procurement. This is in addition to piggyback contracts approved by the Board previously, to allow for expedited purchases related to PPE supplies and equipment, HVAC equipment, playground flooring and a districtwide website hosting service.

Use of piggyback contracts is allowed under Public Contract Codes 10299 and 20118 and is a procurement best practice that takes advantage of competitive pricing from a contract formally bid by another school district or public agency. The district has determined that when appropriate, use of piggyback contracts is advantageous and in the best interest of the district to reduce administrative time and expense, provide favorable pricing and/or provide options and flexibility. Approval does not commit the district to purchases or require that any specific contract be utilized. Use of piggybacks allows the district to expedite supplies/materials to meet specific needs quickly or to utilize a different contract if a vendor from an existing contract cannot provide services in a timely manner. All purchases associated with piggyback contracts are presented to the Board for ratification on monthly purchase order reports. The complete contracts are available for review in the Purchasing Department.

FINANCIAL SUMMARY: Estimated annual expenditures for each piggyback contract (if utilized) are indicated on the backup material; funding will be determined on a project-by-project basis.

PREPARED BY: Ann Loorz,
Executive Director, Purchasing

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor Management Officer

SUPERINTENDENT APPROVAL:

PIGGYBACK BACKUP SUPPLEMENTAL LIST
SEPTEMBER 28, 2022 BOARD MEETING

Supplier and Primary Location		Piggyback Contract Name (and Cooperative Agency Name, if applicable)	Lead Agency	Estimated Annual $	Purpose of Piggyback	Additional Information (pricing structure, examples of items purchasing)
1.	McKesson Medical-Surgical Government Solutions, LLC Henrico, VA	Sourcewell Contract: 022422-MML Medical Supply Solutions	Sourcewell	$400,000	Allows purchase of Pharmaceuticals, First-Aid, Medical Equipment and Supplies, and PPE Supplies.	20% discount off McKesson Government List Price "GLP" for all products and services. Replaces Contract #061417-MML that expired 07/25/22.
2.	School Health Corporation Hanover Park, IL	Sourcewell Contract: 022422-SHC Medical Supply Solutions	Sourcewell	$1,500,000	Allows purchase of Health and Safety, Medical, Surgical, and First-Aid Supplies, Mobility, Sports, Gym, and Fitness equipment.	13 % off 117 product categories. Up to 63% off with an average of 27% off market basket "Hot List" items. Replaces Contract #061417-SHC that expired 07/25/22.
3.	Staples Framingham, MA	Sourcewell Contract:012320-SCC Office Supply Catalog Solutions	Sourcewell	$500,000	Allows purchase of First-Aid Supplies, Furniture, Technology items sustainability solutions and facilities and maintenance equipment including HVAC.	Up to 30% discount based on volume on catalog and up to 60% off on market basket items. New piggyback contract is a backup resource to FUSD.
4.	SofSurfaces, Inc. Petrolia, Ontario	Sourcewell Contract: 010521-SFS Playground and Water Play Equipment with Related Accessories and Services	Sourcewell	$200,000	Allows for purchase of Premium Durasafe tiles used at FUSD playgrounds	10% off MSRP/quantity discounts available based on overall square footage of the area: 500-999 sq.ft.: 2.5%; 1000-1999 sq.ft.: 5%; 2000-3999 sq.ft.: 7.5%; 4000+ sq.ft: 10%
5.	Active Internet Technologies dba Finalsite Glastonbury, CT	Education Technology Joint Powers Authority Contract: 20/21-02 Web Design and Hosting	Ed Tech JPA	$150,000	Allows for purchase of service to overhaul the district website and all the individual school sites within the district	Set pricing depending on the service/package requested.

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022 **AGENDA ITEM A-18**

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Ratify
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Ratify Change Orders for the Projects Listed Below

ITEM DESCRIPTION: Included in the Board binders is information on Change Orders for the following projects:

Bid 21-38, Centennial and Wishon Elementary Schools and Scandinavian Middle School Multipurpose Room HVAC Upgrades, Change Order 2 (Centennial) includes but may not be limited to: provide pad locks and keys for site personnel; decrease of 4 days to correct contract completion date.

Original contract amount:	$	1,629,000
Original Contract Amount (Centennial):	$	504,000
Change Order(s) previously ratified:	$	- 3,543
Change Order 2 presented for ratification:	$	- 1,225
New Contract Amount (Centennial):	$	499,232
Original Contract Amount (Wishon):	$	585,000
Change Order(s) previously ratified:	$	0
Original Contract Amount (Scandinavian):	$	540,000
Change Order(s) previously ratified:	$	0
New Contract Amount (Centennial, Wishon, Scandinavian):	$	1,624,232

Bid 21-42 Section A, Bullard High School Athletic Field Improvements, Change Order 7 includes but may not be limited to: Supply chain delay of scoreboard delivery; and add 172 days to contract duration.

Original Contract Amount:	$	3,902,544
Change Order(s) previously ratified:	$	223,308
Change Order 7 presented for ratification:	$	0
New Contract Amount:	$	4,125,852

All requests for a change to the project are subject to multiple layers of review and evaluation, by both the project team (designer, contractor, DSA inspector, project manager) and district management. Final approval for modification to the contract, resulting in a change order, is by the district. Each item in a change order is the result of one of the following: district request; unknown, unforeseen, or hidden condition; designer error/omission; or regulatory requirement. Change order costs are tracked by item and responsibility identified. Change orders can also include credits to the district. A Project Financial Summary is attached to each change order in the backup material.

FINANCIAL SUMMARY: $1,225 will be credited to the Measure X Fund for Bid 21-38.

PREPARED BY: Ann Loorz,
Executive Director, Purchasing

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor
Management Officer

SUPERINTENDENT APPROVAL:

Fresno Unified School District

CHANGE ORDER

PROJECT NAME:
Centennial E.S. MPR HVAC Upgrade
3830 E Saginaw Way
Fresno, CA 93726

CHANGE ORDER No. : 002 R

DSA File No. : 10-48

Application No. : 02-117926

CONTRACTOR :
Marko Construction Group
3675 E. Jensen Ave.
Fresno, CA 93725

DESIGNER'S PROJECT No. : 18003597

FUSD BID/CONTRACT No. : 21-38

CONTRACTOR P.O. No. : 00000703426

Change Order not valid until signed by Designer, Contractor and Owner. The Contract is changed as follows:

The original Contract Sum was	$	504,000.00
Net change by previously authorized Change Orders	$	(3,543.26)
The Contract Sum prior to this Change Order was	$	500,456.74
The Contract Sum will be adjusted by	$	(1,225.00)
The new Contract Sum, including this Change Order will be	$	499,231.74
The Contract Completion date prior to this Change Order was		11/11/2021
The Contract Time will be adjusted by		(0) Calendar Days
The new Contract Completion date, including this Change Order is therefore		11/11/2021

NOTE: *Contractor agrees to furnish all labor and materials and perform all of the work described herein, in accordance with the above terms and in compliance with the Contract Documents. The amount of the charges under this Change Order is limited to the charges allowed under the General Requirements. The adjustment in the Contract Sum, if any, and the adjustment in the Contract Time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the Contract Time and Contract Sum due to the Contractor arising out of the change in the work covered by this Change Order.*

Recommended by:

IMEG
901 Via Piemonte, #400
Ontario, CA 91764

ARCHITECT/ENGINEER:

Digitally signed by Andy L Cloud
Date: 2022.07.20 14:27:10-07'00'

By: Andy Cloud

Date: 07/20/2022

Accepted by:

Marko Construction
3675 E. Jensen Ave.
Fresno, CA 93725

CONTRACTOR:

By: Jason Tenty

Date: 7/26/22

Authorized by:

Fresno Unified School District
4600 N. Brawley
Fresno, CA 93722

OWNER:

By: Alex Belanger

Date: 8/19/2022

Fresno Unified School District

CHANGE ORDER

You are directed to make the following changes in this Contract:

Item 2-1

DESCRIPTION OF CHANGE:
New padlock and keys for applicable personnel for site. 35 gate locks/keys x $35.00.

REASON FOR CHANGE:
Contractor checked out a construction gate key for use at Centennial. The keys were stolen.

CHANGE CATEGORY:
Unknown, Unforeseeable, Hidden condition.

DOCUMENT REFERENCE:
N/A

Amount of this Change Order Item:	**Decrease**	**$ 1,225.00**
Time adjustment by this Change Order Item:	**Increase**	0 Days

Item 2-2

DESCRIPTION OF CHANGE:
Contract completion date correction.

REASON FOR CHANGE:
The wrong completion date (11/15/21) was put on Change Order 001. Correct date is 11/11/21.

CHANGE CATEGORY:
Designer E & O.

DOCUMENT REFERENCE:
N/A

Amount of this Change Order Item:	**Increase**	**$ -**
Time adjustment by this Change Order Item:	**Decrease**	4 Days

TOTAL CONTRACT SUM ADJUSTMENT BY THIS CHANGE ORDER:	**DECREASE**	**$ 1,225.00**
TOTAL CONTRACT TIME ADJUSTMENT BY THIS CHANGE ORDER:	**DECREASE**	**4 DAYS**

***** End of CHANGE ORDER *****

Fresno Unified School District

Facilities Management & Planning

Project Financial Summary

Project Name: Centennial E.S. MPR HVAC Upgrade

DSA #: 02-117926

BID #: 21-38

Date: 8/12/22

Contractor: Marko Construction

Architect: IMEG Engineering

Change Order:

Contract Summary:

Bid Award Amount(s)

Base Bid:

Centennial Base Bid	$ 504,000.00
Wishon Base Bid	$ 585,000.00
Scandinavian Base Bid	$ 540,000.00
Total Agreement Amount:	$ 1,629,000.00

Contract Adjustments:

Total Contract Amount $ 1,629,000.00

Contract Adjustments:	District Requested		Governing agency req'd change post-bid		Unknown, unforeseen, hidden		Designer E & O		District/Designer		Total		
Centennial CO #001	$ (4,909.70)								$ 1,366.44		$ (3,543.26)		
Centennial CO #002					$ (1,225.00)						$ (1,225.00)		
											$ -		
Totals:	**$ (4,909.70)**	-0.3%	$ -	0.0%	**$ (1,225.00)**	-0.1%	$ -	0.0%	**$ 1,366.44**	0.1%	**$ (4,768.26)**	$	**(4,768.26)** -0.3%
Total Contract Amount with Adjustments												$	**1,624,231.74**

Fresno Unified School District

CHANGE ORDER

PROJECT NAME:
Bullard High School Athletic Field Improvements
5445 N Palm Ave
Fresno, CA 93704

CHANGE ORDER No. :	**007**
DSA File No. :	10-H8
Application No. :	02-117353

CONTRACTOR :
Ardent General, Inc
2960 N Burl Ave
Fresno, CA 93727

DESIGNER'S PROJECT No. :	217-0145
FUSD BID/CONTRACT No. :	21-42A
CONTRACTOR P.O. No. :	703897A

Change Order not valid until signed by Designer, Contractor and Owner. The Contract is changed as follows:

The original Contract Sum was	$ 3,902,544.00
Net change by previously authorized Change Orders	$ 223,307.86
The Contract Sum prior to this Change Order was	$ 4,125,851.86
The Contract Sum will be adjusted by	$ -
The new Contract Sum, including this Change Order will be	$ 4,125,851.86
The Contract Completion date prior to this Change Order was	2/28/2022
The Contract Time will be adjusted by	172 calender days
The new Contract Completion date, including this Change Order is therefore	8/19/2022

NOTE: *Contractor agrees to furnish all labor and materials and perform all of the work described herein, in accordance with the above terms and in compliance with the Contract Documents. The amount of the charges under this Change Order is limited to the charges allowed under the General Requirements. The adjustment in the Contract Sum, if any, and the adjustment in the Contract Time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the Contract Time and Contract Sum due to the Contractor arising out of the change in the work covered by this Change Order.*

Recommended by:

Blair, Church & Flynn
451 Clovis Ave #200
Fresno, CA 93612
ARCHITECT/ENGINEER:
By: Zachary Hockett, PE
Date: 08/12/2022

Accepted by:

Ardent General, Inc.
2960 N Burl Ave
City, CA 93727
CONTRACTOR:
Matt Grabowski
By: ~~Garrett Pack~~
Date: 8/15/2022

Authorized by:

Fresno Unified School District
4600 N. Brawley
Fresno, CA 93722
OWNER:
By: Alex Belanger, Asst. Sup.
Date: 8/19/2022

Fresno Unified School District

CHANGE ORDER

You are directed to make the following changes in this Contract:

Item 7-1

DESCRIPTION OF CHANGE:
Add 172 Calendar Days to Contract duration. FUSD and Contractor each acknowledge and agree that the Contract remains in full force and effect and nothing in this Change Order shall consititue a waiver by FUSD of any or all rights it has under the Contract or applicable law. No compensation is due to contractor for the additional days identified in this Change Order.

REASON FOR CHANGE:
Contract time extension to accommodate minor project close-out activities

CHANGE CATEGORY:
Unknown, Unforeseeable, Hidden condition.

DOCUMENT REFERENCE:

Amount of this Change Order Item:	**Increase**	**$** -
Time adjustment by this Change Order Item:	**Increase**	172

TOTAL CONTRACT SUM ADJUSTMENT BY THIS CHANGE ORDER:	**INCREASE**	**$** -
TOTAL CONTRACT TIME ADJUSTMENT BY THIS CHANGE ORDER:	**INCREASE**	**172**

***** End of CHANGE ORDER *****

Fresno Unified School District

Facilities Management & Planning

Project Financial Summary

Project Name: Bullard High School
Athletic Field Improvements
DSA #: 02-117353
BID #: 21-42A

Date: 8/11/22
Contractor: Ardent General, Inc
Architect: BCF
Change Order: 7

Contract Summary:

Bid Award Amount(s)

Base Bid:	Athletic Field Improvements	$ 3,902,544.00
Total Agreement Amount:		$ 3,902,544.00

Contract Adjustments:

Total Contract Amount $ 3,902,544.00

Contract Adjustments:	District Requested		Governing agency req'd change post-bid		Unknown, unforeseen, hidden		Designer E & O		District/Designer		Total		
CO #001	$ 1,008.24		$ -		$ 1,045.58		$ 27,699.36		$ 5,053.42		$ 34,806.60		
CO #002	$ 71,677.76		$ -		$ 46,759.00		$ -		$ (9,435.58)		$ 109,001.18		
CO #003	$ 16,968.60		$ -		$ 10,907.45		$ 10,904.30		$ 19,631.70		$ 58,412.05		
CO #004	$ 3,008.61		$ -		$ 5,659.50		$ -		$ -		$ 8,668.11		
0			$ -		$ -		$ -		$ 9,950.60		$ 9,950.60		
CO #006			$ -		$ -		$ 2,469.32		$ -		$ 2,469.32		
CO #007			$ -		$ -		$ -		$ -		$ -		
Totals:	**$ 92,663.21**	2.4%	**$ -**	0.0%	**$ 64,371.53**	1.6%	**$ 41,072.98**	1.1%	**$ 25,200.14**	0.6%	**$ 223,307.86**	**$ 223,307.86**	5.7%

Total Contract Amount with Adjustments **$ 4,125,851.86**

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM A-19

AGENDA SECTION: A
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Ratify
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Ratify the Filing of a Notice of Completion

ITEM DESCRIPTION: Included in the Board binders is a Notice of Completion for the following project, which has been completed according to plans and specifications:

Bid 21-42 Section A, Bullard High School Athletic Field Improvements

For Information Only

Original contract amount:	$ 3,902,544
Change Order(s) previously ratified:	$ 223,308
Contract amount:	$ 4,125,852

FINANCIAL SUMMARY: Retention funds are released in accordance with contract terms and California statutes.

PREPARED BY: Ann Loorz,
Executive Director, Purchasing

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor Management Officer

SUPERINTENDENT APPROVAL:

NO FEE REQUIRED
No Fee for recording in accordance with California Government Code Sections 6103 and 27383

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
Fresno Unified School District
Purchasing Department
4498 N. Brawley Avenue
Fresno, CA 93722

2022-0105071
FRESNO County Recorder
Paul Dictos, CPA
Friday, Aug 19, 2022 03:56:43 PM
CONFORMED COPY
Copy of document recorded.
Has not been compared with original.

NOTICE OF COMPLETION (AND ACCEPTANCE)

Notice pursuant to Civil Code Section 9204 must be filed within 15 days after completion.

Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner if the interest or estate stated below in the property hereinafter described:

2. The full name of the owner is **FRESNO UNIFIED SCHOOL DISTRICT**

3. The full address of the owner is **2309 Tulare Street, Fresno, California 93721**

4. The nature of the interest or estate of the owner is: **IN FEE**

   (If other than "In Fee" an insert, for example, "Purchase under contract of Purchase", "or lease")

5. A work of improvement on the property hereinafter described was accepted/completed on **August 19, 2022**. The work done was **Athletic Field Improvements, Section A** **Bid No. 21-42.**
   This determination of acceptance/completion shall not be construed as a waiver of the undersigned owner's rights to enforce any provision of the contract accepted/completed, including but not limited to requiring any and all punch list, testing, startup, commissioning, or other contract work to be performed in its entirety in accordance with the Contract Documents, which rights are expressly reserved by the undersigned owner.

6. The Name of the contractor, if any, for such work of improvement was:
   Ardent General, Inc. 2960 N. Burl Ave., Fresno, CA 93727 **June 3, 2021**
   (IF NO CONTRACTOR FOR WORK OR IMPROVEMENT AS A WHOLE, INSERT "NONE") (DATE OF CONTRACT)

7. The property on which said work of improvement was completed is in the City of Fresno, County of Fresno, State of California, and is described and the address is as follows:
   Bullard High School 5445 N. Palm Ave., Fresno, CA 93704 **DSA No.: 02-117353**

Date: **August 19, 2022**

Ann Loorz, Executive Director of Purchasing
Fresno Unified School District

VERIFICATION
I, the undersigned say: I am the Executive Director of Purchasing the declarant of the foregoing notice of completion (and acceptance); I have read said notice of completion (and acceptance) and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2022 at Fresno,

Ann Loorz, Executive Director of Purchasing
Fresno Unified School District

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM B-20

AGENDA SECTION: B
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Adopt
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Hold a Public Hearing and Adopt Resolution in the Matter of Sufficiency of Instructional Materials

ITEM DESCRIPTION: Included in the Board binders is the Resolution in the Matter of Sufficiency of Instructional materials.

The governing board of each district is required to hold a public hearing and adopt a resolution stating whether each pupil, including English Learners, has standards-aligned textbooks and instructional materials in these subject areas; English Language Arts, Mathematics, History/Social Science, Health in grades seven through twelve, Foreign Language in grades seven through twelve, and Science equipment in grades nine through twelve.

A survey to determine sufficient instructional materials at each school site was administered to all schools (transitional kindergarten through twelve).

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Carlos Castillo,
Instructional Superintendent

DIVISION: Instructional Division
PHONE NUMBER: (559) 457-3731

CABINET APPROVAL: Dr. Natasha Baker,
Chief Academic Officer

SUPERINTENDENT APPROVAL:

Fresno Unified School District

Achieving our Greatest Potential!

BOARD OF EDUCATION
Elizabeth Jonasson Rosas, President
Genoveva Islas, Clerk
Claudia Cazares
Valerie F. Davis
Andy Levine
Major Terry Slatic USMC (Retired)
Keshia Thomas

SUPERINTENDENT
Robert G. Nelson, Ed.D.

BEFORE THE BOARD OF EDUCATION OF FRESNO UNIFIED SCHOOL DISTRICT OF FRESNO COUNTY, CALIFORNIA

In the Matter of Sufficiency) of Instructional Materials) **Resolution 23-05**

WHEREAS, the governing board of the Fresno Unified School District, in order to comply with the requirements of *Education Code* Section 60119 held a public hearing on September 28, 2022, at five-thirty o'clock, which is on or before the eighth week of school and which did not take place during or immediately following school hours, and;

WHEREAS, the governing board provided at least 10 days' notice of the public hearing posted in at least three public places within the district that stated the time, place, and purpose of the hearing, and;

WHEREAS, the governing board encouraged participation by parents, teachers, members of the community, and bargaining unit leaders in the public hearing, and;

WHEREAS, information provided at the public hearing and to the governing board at the public meeting detailed the extent to which web-based and electronic/digital curriculum, textbooks and instructional materials were provided to all students, including English learners, in the district, and;

WHEREAS, the definition of "sufficient textbooks or instructional materials" means that each pupil has access to web-based and electronic/digital curriculum, a textbook or instructional materials, or combination, to use in class and to take home, and;

WHEREAS, sufficient textbooks and/or instructional materials were provided to each student, including English learners that are aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks in the following subjects:

- Mathematics
- Science
- History-social science
- English/language arts, including the English language development component of an adopted program

WHEREAS, sufficient textbooks and/or instructional materials were provided to each pupil in grades 7-12 enrolled in foreign language and health classes, and;

WHEREAS, laboratory science equipment was available for science laboratory classes offered in grades 9-12, inclusive;

WHEREAS, the District's use of web-based and electronic/digital curriculum, textbooks and instructional materials requirements is consistent with law as long as students have access to computers or other devices and the Internet in school and at home, and that students with digital textbooks or instructional materials have access to computers or other devices in school and at home; and

WHEREAS, District administration has demonstrated that sufficient digital curriculum, textbooks or instructional material, and internet access equipment are being provided to each student and said materials are aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks, in substantial accordance with Education Code section 60119 within the required distance learning context.

NOW, THEREFORE, BE IT FURTHER RESOLVED for the 2022/23 school year, that the Board does hereby provide public notice and has been provided each pupil with sufficient textbooks and/or instructional materials aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks.

ADOPTED THIS 28th day of September 2022 by the following vote:

AYES:	7
NOES:	0
ABSENT:	0

Elizabeth Jonasson Rosas, Board President

Robert G. Nelson, Ed.D., Superintendent

Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM B-21

AGENDA SECTION: B
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Discuss
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Present and Discuss Summer 2022 Programming

ITEM DESCRIPTION: Staff will present to the Board of Education an update about the offerings and outcomes of programs offered to students during Summer of 2022. During June of 2022, all available elementary, middle, and high schools operated Summer Academies resulting in over 31,000 students attending. This resulted in an increase in student attendance over previous years. Other talking points include:

- The expansion of Summer Academies is due to the requirements of the Expanded Learning Opportunities Program funding mandating that services are offered to all unduplicated students Transitional-Kindergarten through sixth grade which consists of more than 90% of Fresno Unified students.
- Nearly 6,000 students attended a Fresno Unified Summer Camp program in the month of July.
- Proposed summer operational dates for future years will remain consistent with what was offered in Summer of 2022 with Summer Academies taking place at all schools for three weeks the month of June and Summer Camps offered in the month of July.
- Intentional work will need to continue to ensure that all families receive communication about opportunities that exist district wide in Summer Academies and Summer Camps.
- The Extended Learning Office will continue to receive Request for Qualifications (RFQ) proposals from perspective community-based partners/vendors. This RFQ review and subsequent contract proposal process will take place a minimum of twice per year.

FINANCIAL SUMMARY: There is no fiscal impact to the district at this time.

PREPARED BY: Jeremy Ward,
Assistant Superintendent

DIVISION: Instructional Division
PHONE NUMBER: (559) 457-3731

CABINET APPROVAL: Dr. Natasha Baker,
Chief Academic Officer

SUPERINTENDENT APPROVAL:

Fresno Unified School District

College & Career Readiness - Extended Learning

Achieving our Greatest Potential!

EXPANDED LEARNING OPPORTUNITIES PROGRAM

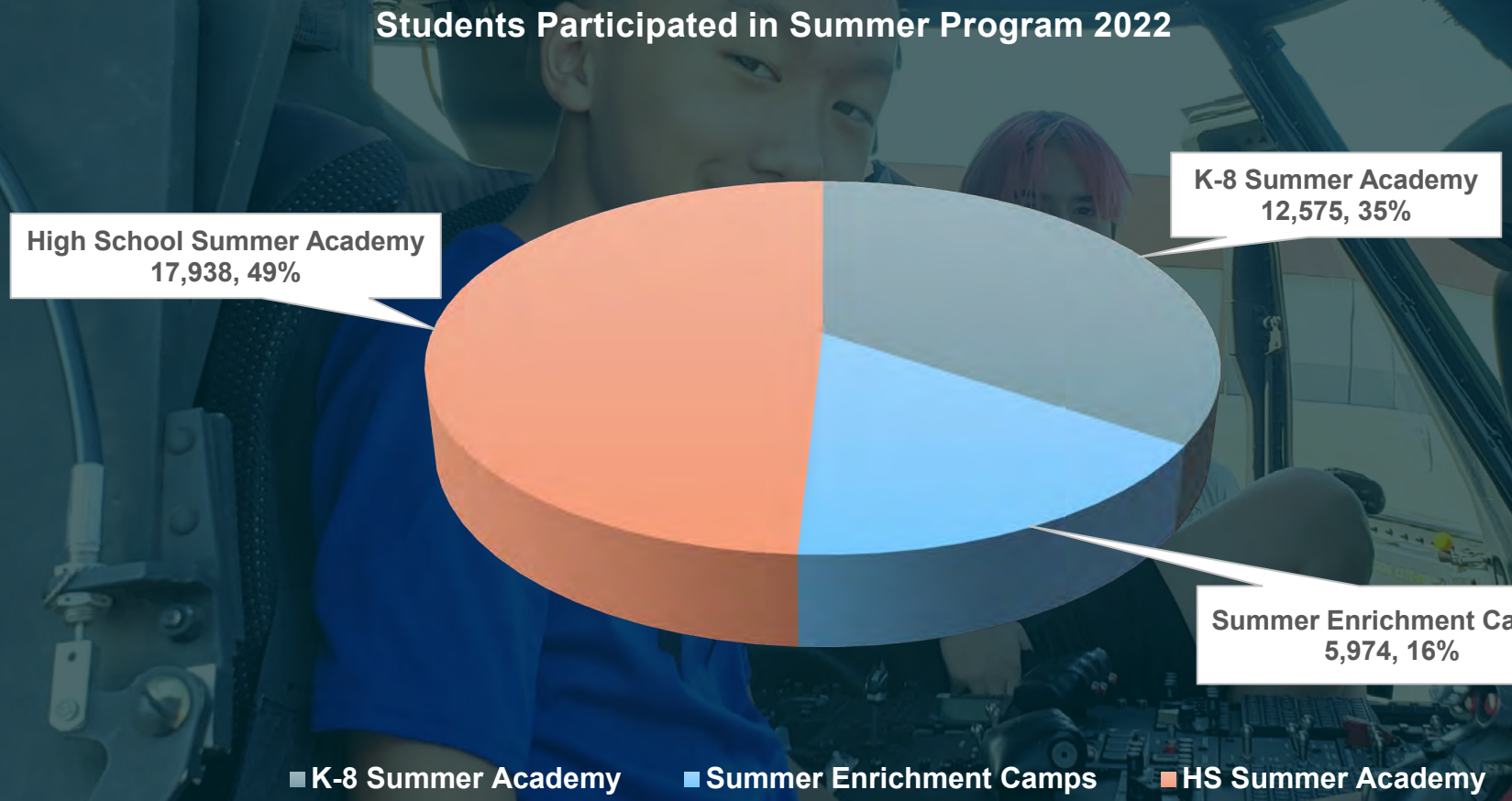
SUMMER PROGRAM REPORT

SUMMER 2022

SUMMER PROGRAMS

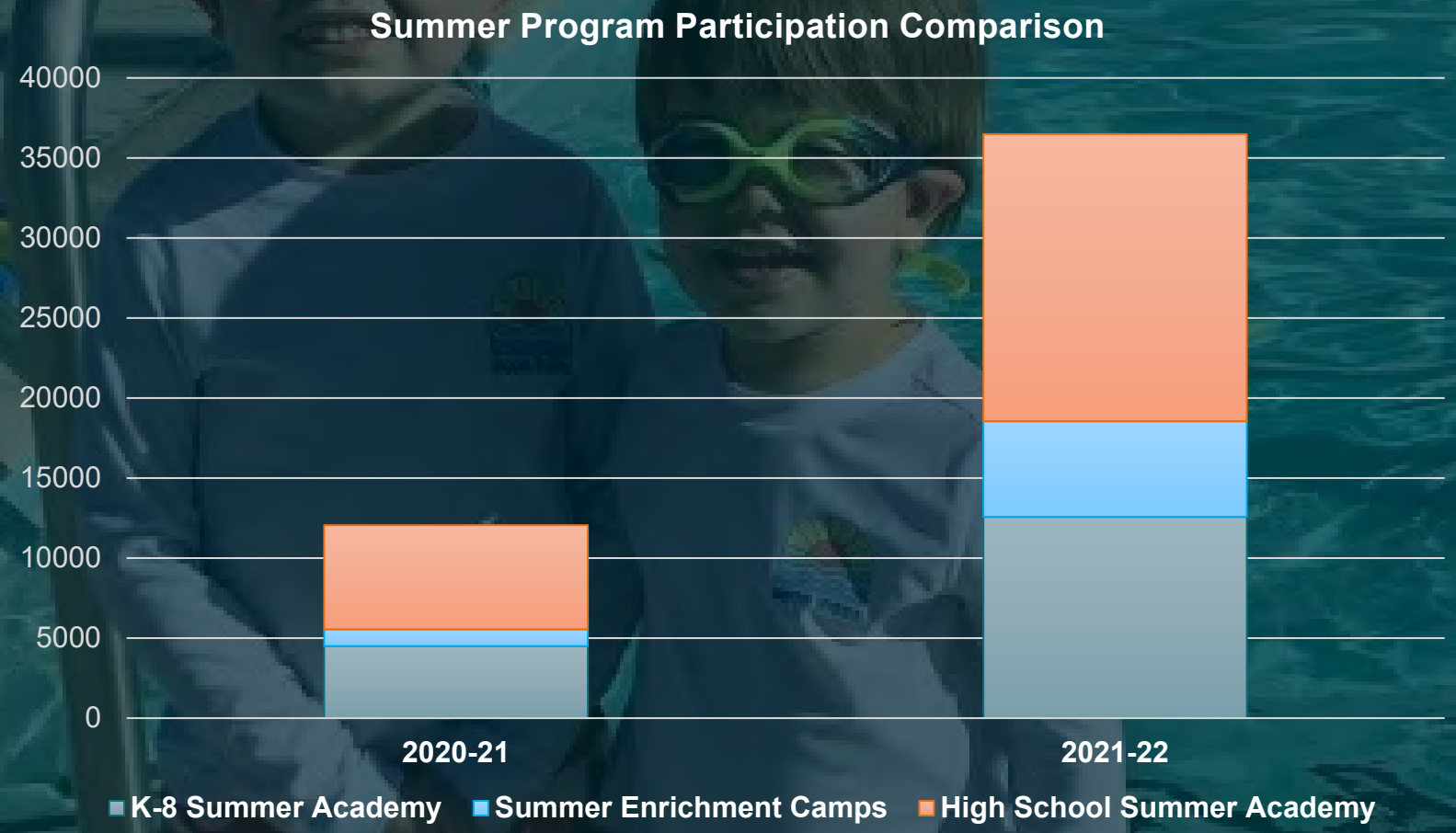
- K-8 Summer Academy
- Summer Enrichment Camps
- High School Summer Academy

SUMMER PROGRAM PARTICIPATION



Total Enrollment: 36,487

SUMMER 2021 vs. SUMMER 2022 COMPARISON



CAUSES OF GROWTH

First Time Ever! Summer Academy operating at all school sites!

- ❖68 Elementary Schools
- ❖14 Middle Schools
- ❖8 High Schools
- ❖4 Alternative Education Sites

Focus on English, Math, and other unique opportunities.

- ❖Social and Emotional Learning (SEL)
- ❖Arts
- ❖STEAM

Allowing students to participate Summer Academy at their school of enrollment.

KEY STRATEGIES

- School sites leading use of extended learning time
- Expand summer academies
- Expand summer camp opportunities
- Partner with high-quality CBO’s

STUDENTS SERVED

Summer Program	Hispanic/ Latinx	Asian	African American	Homeless/ Foster Youth	Special Education	English Language Learners
Academy	9,959	2,644	2,792	395	4,645	6,726
Camps	2,874	306	608	80	485	457
Total	12,833	2,950	3,400	475	5,130	7,183

Summer Program	Bullard	Edison	Fresno	Hoover	McLane	Roosevelt	Sunnyside	Specialty/ Others
Academy	3,199	3,438	3,255	3,564	3,901	4,671	4,217	4,711
Camps	858	499	463	663	586	436	415	512
Total	4,057	3,937	3,718	4,227	4,487	5,107	4,632	5,223

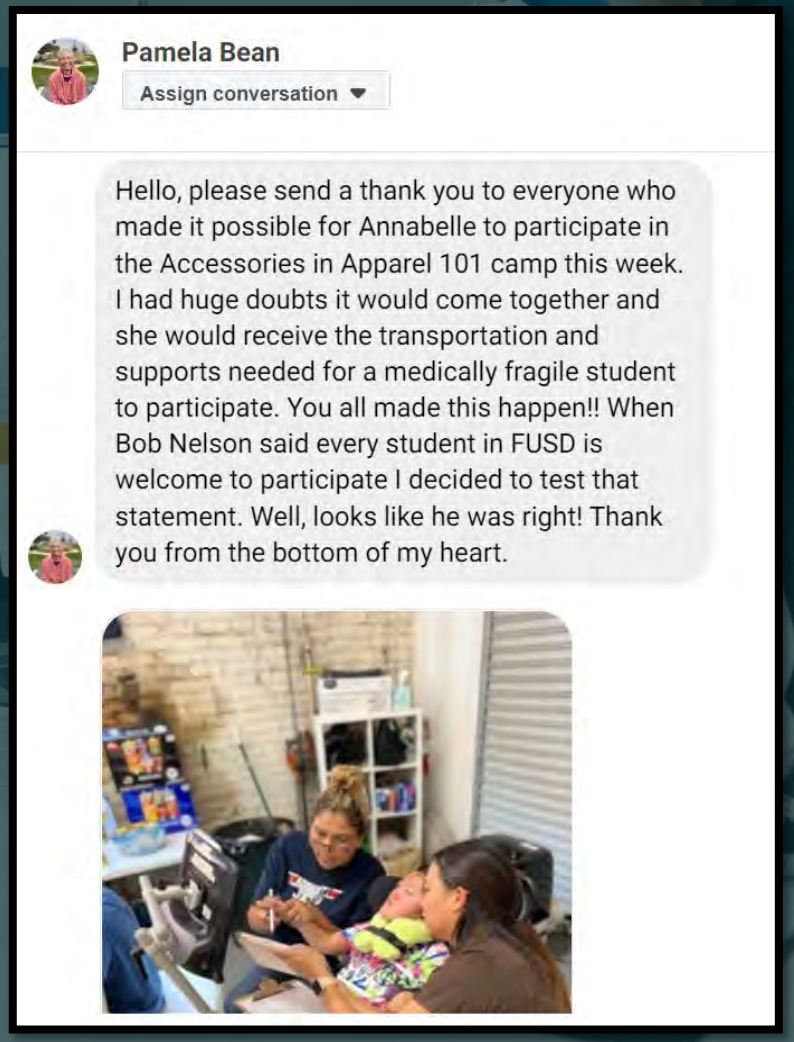
OUR 36 SUMMER PARTNERS

Adventure Education Solutions
African Drumming
AIMS
Andrea Torres
Arté Americas
Assist Academy
Bricks 4Kidz
Break the Barriers
California Teaching Fellows
Carrillo ALW
Camp ALTA Fresno
Camp Hinton Center
City of Fresno PARCS
Drone Legends
Educational Leadership Foundation
Every Neighborhood Partnership
Fresno Area First Responders
Fresno Chaffee Zoo
Fresno Discovery Center
Fresno State Athletics
Fresno Unified Career Technical Education
Fresno Unified Fuel eSports League
Fuel by Leo
Growth Point Technologies
HandsOn Central California
Impact Athletics
Ivy League Project
J.E. Creations
KLSD Design Co.
McCoy Talent Gallery
Moreno Institute
My Little Piñatas
New Vision Aviation
San Joaquin River Parkway
StudentNest
WorkEd

MOVING FORWARD

- Increase the amount and types of opportunities for ALL students
- Improve communication to increase accessibility
- Expand and adopt culturally relevant opportunities
- Expand community outreach
- Incorporate academic and program quality metrics

WHY WE ARE HERE...



Fresno Unified School District
Board Agenda Item

Board Meeting Date: September 28, 2022

AGENDA ITEM B-22

AGENDA SECTION: B
(A – Consent, B – Discussion, C – Receive, Recognize/Present)

ACTION REQUESTED: Ratify
(Adopt, Approve, Discuss, Receive, etc.)

TITLE AND SUBJECT: Opportunity for Public Disclosure and Ratification of the 2022/2023 Negotiated Collective Bargaining Agreement between Fresno Unified School District and California School Employees Association, Chapter 143

ITEM DESCRIPTION: In accordance with Government Code 3547.5, all major provisions of collective bargaining agreements are to be presented at a public meeting of the public-school employer before the employer enters into written agreement with an exclusive representative. Included in the Board binders is a copy of the Tentative Agreement between Fresno Unified School District and California School Employees Association, Chapter 143.

FINANCIAL SUMMARY: The estimated cost is included in the disclosure agreement.

PREPARED BY: Paul Idsvoog,
Chief Operations and Classified Labor Management Officer

DIVISION: Operational Services
PHONE NUMBER: (559) 457-3134

CABINET APPROVAL: Paul Idsvoog,
Chief Operations and Classified Labor Management Officer

SUPERINTENDENT APPROVAL:

TENTATIVE AGREEMENT
Between The
Fresno Unified School District
And The
California School Employees Association And Its Fresno Food Service Chapter # 143

For the 2022/2023 Reopener Negotiations

August 11, 2022

The following is a Tentative Agreement between the Fresno Unified School District ("District") and the California School Employees Association and its Fresno Food Service Chapter 143 ("CSEA") for the parties' reopener contract negotiations for the 2022-2023 term.

ARTICLE 8: EMPLOYEE RIGHTS:

Status Quo.

ARTICLE 9: FRINGE BENEFITS

Status Quo.

ARTICLE 11: HOLIDAYS:

Modify Article 11 as follows:

Effective starting the 2022-2023 school year, add Juneteenth to the list of Scheduled Holidays.

ARTICLE 12: HOURS AND OVERTIME

For the 2022-2023 school year only, increase the work year an additional 27 days of Nutrition Service Managers who opt in to work. The 27 Additional days include 12 days of Winter Session and 15 days of summer session. The list of unit members opting in must be received by the District from CSEA by August 1, 2022 (cutoff date). The Parties agree that the additional days provided through this section shall automatically be eliminated on July 1, 2023, without requiring the District to initiate and proceed through statutory layoff procedures.

For the 2022-2023 school year only, Cook Bakers, Nutrition Service Operators, Senior Assistants, Nutrition Service Assistants and Packaging Machine Operators may be eligible to work up to one additional hour per day, depending on the needs of the site/department, as determined by the Nutrition Service Manager/CSS with final approval by District Supervisor. This up to 1 hour adjustment to assigned time through this section does not expand part time employee's rights to health and welfare benefits, and only to fringe benefits as required in Education Code sections 45136 and 45137. The Parties agree that the up to 1 hour of additional time provided through this section shall automatically be eliminated at the end of the student calendar for the 2022-2023 school year without requiring the District to initiate and proceed through statutory layoff procedures.

ARTICLE 13: LAYOFF AND REEMPLOYMENT:

Modify Article 13 as follows:

2. Notice of Layoffs:

Procedures for layoff notice and right to hearing are set forth in Education Code Section 45117. The District will endeavor to provide the CSEA and its Chapter 143 Bargaining Team and Labor Relations Representative advanced notice prior to sending out notices to affected employees. The parties shall meet to review seniority lists in all affected classifications no more than sixty (60) days following the notice of the intent to layoff bargaining unit employees.

Notice of layoff shall include:
A. Reason for layoff
B. Date effective
C. Seniority placement
D. Notice of bumping rights
E. Reemployment rights
F. Promotional rights
G. Service retirement options

~~Prior to the effective date of any layoff, FUSD shall meet with CSEA to review the seniority list.~~

ARTICLE 23: SALARY:

1. **2022-2023: The parties agree that based on the following contingency language, the Salary Schedule for 2022-2023 may be increased as set forth below:**

1.1. 2022-2023: The parties agree that based on the following contingency language, the Classified Salary Schedules for 2022-2023 may be increased as set forth below:

1.1.1. If the District's 2022-2023 first interim LCFF Revenue Limit Sources (Line A.1.) for 2022-2023 are $23,792,503 above the 2021-2022 unaudited actual LCFF Revenue Limit Sources (Line A.1.), the parties agree that the Fair Share Calculation of New Ongoing LCFF Dollars (attached) will result in a 1% increase to all Classified Salary Schedules effective July 1, 2022.

1.1.2.If the District's 2022-2023 first interim LCFF Revenue Limit Sources (Line A.1.) for 2022-2023 are $26,689,116 above the 2021-2022 unaudited actual LCFF Revenue Limit Sources (Line A.1.), the parties agree that the Fair Share Calculation of New Ongoing LCFF Dollars (attached) will result in a 1.5% increase to all Classified Salary Schedules effective July 1, 2022.

1.1.3. If the District's 2022-2023 first interim LCFF Revenue Limit Sources (Line A.1.) for 2022-2023 are $29,585,730 above the 2021-2022 unaudited actual LCFF Revenue Limit Sources (Line A.1.), the parties agree that the Fair Share

Calculation of New Ongoing LCFF Dollars (attached) will result in a 2.0% increase to all Classified Salary Schedules effective July 1, 2022.

1.1.4. If the District's 2022-2023 first interim LCFF Revenue Limit Sources (Line A.1.) for 2022-2023 are $32,477,180 above the 2021-2022 unaudited actual LCFF Revenue Limit Sources (Line A.1.), the parties agree that the Fair Share Calculation of New Ongoing LCFF Dollars (attached) will result in a 2.5% increase to all Classified Salary Schedules effective July 1, 2022.

1.1.5.If the District's 2022-2023 first interim LCFF Revenue Limit Sources (Line A.1.) for 2022-2023 are $35,373,793 above the 2021-2022 unaudited actual LCFF Revenue Limit Sources (Line A.1.), the parties agree that the Fair Share Calculation of New Ongoing LCFF Dollars (attached) will result in a 3.0% increase to all Classified Salary Schedules effective July 1, 2022.

1.1.6.These contingencies are not cumulative. The Parties agree that for purposes of determining the first interim 2022-2023 LCFF Revenue Limit Sources, "Line A.1" on the following: (1) the COLA utilized shall be as set forth in the State's Final Adopted Budget as of June 30, 2022; (2) the District's 3-year rolling average Unduplicated Pupil Percentage shall be based on the most recently certified CalPADS report (January 2022); and, (3) shall utilize ADA as included in the 2021-2022 "Second Principal Apportionment Report" (P-2) to the California Department of Education. The parties agree that the attached Fair Share Calculation shall be used to determine the salary increases in the above contingency language. The Fair Share Calculation is based on the 20/21 LCFF funding formula for 2022-2023 and should the Governor/Legislature modify the LCFF funding formula, the Parties shall revisit the Fair Share Calculation.

1.1.7.In addition to the Classified Salary Schedule increase set forth above, the parties agree that if additional one-time funding sources allowable for one-time salary payments are included in the 2022-2023 first interim above the 2021-2022 unaudited actuals by $2,900,000, all bargaining unit members employed on the date this agreement is ratified by both parties shall receive a one-time, off schedule payment of one-half percent (.5%) of base salary based on the 2021-2022 salary schedule. The Fair Share Calculation is based on the 20/21 LCFF funding formula for 2022-2023 and should the Governor/Legislature modify the LCFF funding formula, the Parties shall revisit the Fair Share Calculation.

1.1.8.The parties agree to enter into a side letter to provide additional contingency language for 2022-2023 that would provide for additional salary schedule increases in increments of 1.0% for each $20 million in additional LCFF Revenue Limit Sources (Line A.1) over $35,373,793 for 2022-2023. The Fair Share Calculation is based on the 20/21 LCFF funding formula for 2022-2023 and should the Governor/Legislature modify the LCFF funding formula, the Parties shall revisit the Fair Share Calculation.

1.2. <u>The District will provide a one-time stipend of $500 to the 10 identified CSS's listed below who provided additional site coverage beyond the scope of their current duties during the 2021/2022 year at school and worked through August 12, 2022.</u>

1.2.1.1003758
1.2.2.1027302
1.2.3.1029929
1.2.4.1037733
1.2.5.1038423
1.2.6.1040297
1.2.7.1041326
1.2.8.1041332
1.2.9.1045026
1.2.10.1066471

1. For the ~~21-22~~ 22-23 school year, any steps on the salary schedule below the January 1, ~~2022~~ 2023 minimum wage shall be Y-Rated up to **the minimum wage.** ~~$15.00 per hour effective January 1, 2022 2023 until otherwise negotiated by the parties.~~ **Any steps on the salary schedule after January 1, 2023 below any future minimum wage increases set by the state shall also be Y-rated up to the minimum wage.**

2. Parity: If any other District association or union negotiated agreement results in a superior health and welfare/compensation package to that agreed to by another association or union, such negotiated agreement shall be provided to the affected classified association/unions. The parties agree that the superior agreement shall be applied in the same manner to the associations/unions unless the parties mutually agree otherwise. This clause shall not apply to any wage increase resulting from the "scale wage" formula in the negotiated Agreement between the District and the Building Trades Council.

8. Retirement Allowance

Employees who notify the District of their plans to retire at the end of the contracted year shall be eligible for a retirement incentive for advance notice of their intent to retire.

Employees who notify the District before February 1 of each year shall be eligible for up to $1,000.00. Employees who notify the District before March 1 of each year shall be eligible for up to $700.00. These dollar amounts shall be prorated by FTE equivalency.

In order to qualify for an retirement allowance, an early notice of retirement must be submitted and specify the retirement date for the end of the school year, which at the earliest is the last day of student instruction for the academic year or no later than July 31 of that year.

In any given year, the District retains the right to offer the early notification retirement incentives as described above based on the needs of the District. The District agrees to meet with CSEA 143 prior to any decision to change the early notification retirement incentive from the previous year.

Remainder of Article 23 to stay status quo.

All other provisions of the collective bargaining agreement in force to June 30, 2024 shall remain in full force and effect.

Dated: August 11, 2022

Paul Idsvoog (Aug 11, 2022 14:55 PDT)

Paul Idsvoog, Chief Operations Officer/Classified Labor
Fresno Unified School District

Dated: August 11, 2022

Susan Arguello
Susan Arguello (Aug 11, 2022 14:35 PDT)

Susan Arguello, President
CSEA and its Chapter #143

Dated: August 11, 2022

Denesa Moore, Labor Relations Representative
California School Employees Association

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

SCHOOL DISTRICT Fresno Unified School District

BARGAINING UNIT California School Employee Association (CSEA) Chapter 143

PERIOD OF AGREEMENT July 1, 2022 through June 30, 2023

DATE OF PUBLIC MEETING September 28, 2022

Government Code Section 3547.5: Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

The superintendent of the school district and chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term.

If a school district does not adopt all the revisions to its budget needed in the current fiscal year to meet the costs of a collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

Intent of the Legislation: To insure the members of the public are informed of the major provisions of a collective bargaining agreement BEFORE it becomes binding on the school district; make available to the public and governing board, a copy of the proposed agreement prior to the day of the meeting.

STATUS OF BARGAINING UNIT/EMPLOYEE AGREEMENTS

Indicate whether Bargaining Units are settled or not settled.

	SETTLED or NOT SETTLED	NUMBER OF FULL TIME EQUIVALENT POSITIONS
Fresno Teachers Association - (FTA)	settled	4356
CSEA -125	settled	2437
CSEA-143	settled	383
MANAGEMENT	not settled	935
SEIU	not settled	690
SUPERVISORY/CONFIDENTIAL	not settled	92
TRADES - (IAMAW)	not settled	30
TRADES-(FTA)	not settled	113
FASTA	not settled	1367

The proposed agreement covers the period beginning July 1, 2022 and ending June 30, 2023

TOTAL COST INCREASE OF PROPOSED AGREEMENT IN PRESENT AND FUTURE YEARS

Indicate the costs of salary and benefit increases that would be incurred under the agreement for the CURRENT and TWO SUBSEQUENT fiscal years.

TYPE OF COMPENSATION	Current FY: 2022/23	FY 2023/24	FY 2024/25	CUMULATIVE COST CURRENT YEAR & TWO SUBSEQUENT YEARS
Salary Cost Increase	$ 500,903	$ -	$ -	$ 500,903
Benefit Cost Increase	$ 141,280	$ -	$ -	$ 141,280
Other Compensation Costs		$ -	$ -	$ -
TOTAL COST OF SETTLEMENT	$ 642,183	$ -	$ -	$ 642,183
Total % Increase	6.00%	0.00%	0.00%	
Cost of 1% Increase	$ 107,031			

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

SOURCE OF FUNDING

1) Identify the source(s) of funding for the CURRENT year.

Funding is supported by the Cafeteria Fund.

2) If this is a single year agreement, how will the ongoing cost of the proposed agreement be funded in the next TWO SUBSEQUENT years? (i.e., What will allow the district to afford this contract?)

Not Applicable.

3) If this is a multiyear agreement, what is the source of funding, including assumptions used, to fund these obligations in subsequent years? (Remember to include compounding effect in meeting obligations.)

Not applicable.

4) What contingency language is included in the proposed agreement? Include specific areas identified. (i.e., reopeners, applicable fiscal years, and specific contingency language)

The agreements provides a salary increase based on contingency language dependent on new ongoing LCFF revenues.

5) Will this agreement create, increase, or decrease deficit financing in the current or two subsequent year(s)? Deficit Financing is defined to exist when a fund's expenditures and other financing uses exceed its revenues and other financing sources in a given year. If yes, explain the amounts and justification for doing so.

Not Applicable.

6) Identify other major provisions that do not directly affect the district's costs, such as binding arbitrations, grievances procedures, etc.

Not Applicable.

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

OTHER PROVISIONS

OTHER COMPENSATION: Off-schedule stipends, bonuses, etc.

For 2022/23 only, increase Nutrition Service Managers by 27 days to support and be funded by Expanded Learning Opportunities Program; the expanded learning programs. For Cook Bakers, Nutrition Service Operators, Senior Assistants, Nutrition Service Assistants and Packaging Machine Operators part-time staff an increase of upt to 1.0 hour for 2022/23; A $500 one-time stipend to specified supervisors who provided additional site coverage beyond the scope in 2021/22; Retirement allowance for employees who notify the District before February 1 of each year shall be eligible for $1,000.00. Employees who notify the District before March 1 of each year shall be eligible for up to $700.00. These dollar amounts shall be prorated by FTE equivalency.

NON-COMPENSATION: Grievance procedures, staff development days, teacher prep times, etc.

Procedures for layoff notice and right to hearing are set forth in Education Code Section 45117. The District will endeavor to provide the CSEA and its Chapter 143 Bargaining Team and Labor Relations Representative advanced notice prior to sending out notices to affected employees. The parties shall meet to review seniority lists in all affected classifications no more than sixty days following the notice of intent to layoff bargaining unit employees.

IMPACT ON CURRENT FISCAL YEAR

Determine the impact of the proposed agreement on the General Fund budget in the CURRENT year.

RECOMMENDED RESERVES	2.00%	Column 1	Column 2	Column 1 minus Column 2
REVENUE/EXPENDITURES and OTHER USES/SOURCES		Board Approved Budget After Settlement	Board Approved Budget Before Settlement	Total Impact On the Budget
Operating Revenues		$ 1,605,052,783	$ 1,605,052,783	$ -
Operating Expenditures		1,611,745,240	1,611,745,240	-
Operating Surplus / (Deficit)		(6,692,457)	(6,692,457)	-
				-
Other Sources & Transfers In		7,385,329	7,385,329	-
Other Uses & Transfers Out		(8,856,409)	(8,856,409)	-
Change in Fund Balance		(8,163,537)	(8,163,537)	-
				-
Beginning Balance		330,779,722	330,779,722	-
Ending Balance		322,616,185	322,616,185	-
Total Reserve Amounts		322,616,185	322,616,185	-
				-
Nonspendable/Restricted/Committed/Assigned		167,468,344	167,468,344	-
Reserve for Economic Uncertainties		151,544,344	151,544,344	-
Unassigned/Unappropriated		-	-	-
Total Fund Balance		319,012,688	319,012,688	-
				-
Total Unrestricted Reserves		151,544,344	151,544,344	-
State Recommended Reserves		$ 32,412,033	$ 32,412,033	$ -

DISCLOSURE OF COLLECTIVE BARGAINING AGREEMENT

CERTIFICATIONS

The above information summarizes the financial implications of the proposed agreement. This information will be publicly disclosed in accordance with the requirements of AB2756 before being submitted to the Governing Board for ratification.

In accordance with the requirements of the Government Code Sections 3547.5, the Superintendent and Chief Business Official hereby certify that the District can meet the costs incurred under the proposed Collective Bargaining Agreement.

District Superintendent (Signature)	8/24/22 Date
Chief Business Official Santino Danisi Chief Financial Officer	08/23/2022 Date

In accordance with the requirements of the Education Code Section 42142, I hereby certify that any budget revisions that are necessary to fulfill the terms of the agreement in the current year will be submitted to the county superintendent within 45 days of the adoption of this Collective Bargaining Agreement. I further acknowledge that if the necessary budget revisions are not adopted, the county superintendent shall issue a qualified or negative certification for the District on the next interim report pursuant to Government Code Section 3547.5(c).

Chief Business Official Santino Danisi Chief Financial Officer	08/23/2022 Date