

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
SAN FRANCISCO UNIFIED SCHOOL DISTRICT**

**UMBRELLA MEMORANDUM OF UNDERSTANDING
FOR INSTALLATION, OPERATION, AND MAINTENANCE OF
GREEN INFRASTRUCTURE**

between

the CITY AND COUNTY OF SAN FRANCISCO,

by and through its

PUBLIC UTILITIES COMMISSION,

and

the SAN FRANCISCO UNIFIED SCHOOL DISTRICT

in San Francisco, California

Effective as of _____, 2024

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BASIC UMBRELLA MOU INFORMATION
(Capitalized terms defined in Article 1)

This Basic Umbrella Memorandum of Understanding (MOU) Information is intended to summarize certain provisions of the Umbrella MOU and Site Agreements and is for the Parties' reference only. If any information in the Basic Umbrella MOU Information conflicts with any more specific provision of this Umbrella MOU or any Site Agreement issued under it, the more specific provision will control. Capitalized terms are defined below in **Article 1** [Definitions].

District:	San Francisco Unified School District
SFPUC:	San Francisco Public Utilities Commission
City	City and County of San Francisco
Term	Commencing on the Effective Date and lasting until the Expiration Date.
Effective Date:	[DATE]
Expiration Date:	The earlier of (a) the day before the fortieth (40th) anniversary of the Effective Date or (b) the date of expiration or termination of the last unexpired and unterminated Site Agreement.
Extension Option:	One (1) additional term of ten (10) years, if agreed to by the Parties pursuant to the procedures set forth in <u>Section 3.3</u> [Option to Extend Umbrella MOU] below.
City's Permitted Use:	Uses of a Project Site permitted pursuant to an applicable Site Agreement, which may generally include the installation, operation, use, maintenance, and repair of Green Infrastructure, together with improvements reasonably necessary to restore or re-purpose areas impacted by Project construction.
Green Infrastructure Improvements:	Physical or landscape-based interventions installed on a Project Site pursuant to an applicable Site Agreement and designed to protect and enhance the function of City's combined sewer system by reducing the volume and rate of stormwater run-off into the system.

<p>SFPUC Notice Address:</p>	<p>San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 Attn: General Manager Re: SFUSD Umbrella MOU</p>
<p>With a copy to:</p>	<p>San Francisco Public Utilities Commission Wastewater Enterprise 525 Golden Gate Ave, 11th Floor San Francisco, CA 94102 Attn: Urban Watershed Planning Division Manager Re: SFUSD Umbrella MOU</p>
<p>With a copy to:</p>	<p>Office of the City Attorney City and County of San Francisco Room 234, City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: PUC Team Re: SFUSD Umbrella MOU Telephone No.: (415) 554-2700</p>
<p>SFPUC Project Manager and Key Day-to-Day contact for the SFPUC:</p>	<p>Mary Tienken Project Manager, Project Management Division Telephone No.: (415) 554-2482</p>
<p>SFPUC Operations and Maintenance Contact:</p>	<p>Sarah Bloom Senior Watershed Planner Telephone No.(415) 238-5233 sbloom@sflower.org</p>
<p>District Notice Address:</p>	<p>San Francisco Unified School District Facilities Department 135 Van Ness Avenue, 2nd Floor San Francisco, CA 94102 Attn: Associate Superintendent of Operations Re: SFPUC Umbrella MOU</p>
<p>With a copy to:</p>	<p>San Francisco Unified School District Legal Department 555 Franklin Street San Francisco, CA 94102 Attn: Facilities General Counsel Re: SFPUC Umbrella MOU</p>
<p>District Key Contact:</p>	<p>Licinia Iberri Bond Program Director Telephone No.: (415) 439-9271</p>

District Project Representative:	[DISTRICT PM NAME] [DISTRICT PM TITLE] Email Address: Telephone No.: _____
District On-call and Emergency Contact:	Cadi Poile Executive Director, Facilities Services Telephone No.: (415)319-3334

**UMBRELLA MEMORANDUM OF UNDERSTANDING FOR
INSTALLATION, OPERATION, AND MAINTENANCE
OF GREEN INFRASTRUCTURE IMPROVEMENTS**

THIS UMBRELLA MEMORANDUM OF UNDERSTANDING FOR INSTALLATION, OPERATION, AND MAINTENANCE OF GREEN INFRASTRUCTURE (this “**Umbrella MOU**”), dated for reference purposes as of _____, 2024, is made by and between the **SAN FRANCISCO UNIFIED SCHOOL DISTRICT**, a California public school district (“**District**”), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation and charter city organized and existing under the laws of the State of California (“**City**”), acting by and through its **Public Utilities Commission** (“**SFPUC**”). The District and City may be referred to in this Umbrella MOU as a “**Party**” or collectively as the “**Parties.**”

RECITALS

This Umbrella MOU is made with reference to the following facts and objectives:

- A.** The SFPUC has instituted a multi-faceted program to maximize the detention and retention of stormwater, including by installing and operating green infrastructure (“**Green Infrastructure**”). The installation and operation of Green Infrastructure protect and enhance the function of City’s combined sewer system by reducing the volume and rate of stormwater run-off into the system and promoting groundwater recharge. SFPUC is a leader in the development of green approaches to control urban stormwater. The SFPUC requires suitable property to operate its stormwater management program.
- B.** The District owns and operates its extensive real property portfolio of school sites (each, a “**Site**” and collectively, “**Sites**”) in San Francisco, California, some of which are suitable for Green Infrastructure. District acknowledges that Green Infrastructure may enhance the recreational experience of schoolyards with shade and landscaping, as well as the District’s students’ understanding of stormwater management and the District’s efforts to be resilient in the face of climate change.
- C.** The Parties desire to enter into this Umbrella MOU to allow the SFPUC to use Sites approved by the District (each, a “**Project Site,**” and collectively, “**Project Sites**”) to manage stormwater. To that end, City desires to make certain capital improvements, including installing Green Infrastructure and other site improvements (“**Green Infrastructure Project**”).
- D.** The development, use, and maintenance of the Project Sites for the Green Infrastructure Project and the fulfillment generally of this Umbrella MOU are in the vital and best interests of City’s residents, promote their health, safety, and welfare, and are in accordance with the public purposes and provisions of all applicable Laws.
- E.** On _____, 2022, by Resolution No. _____, the SFPUC’s Commission approved the SFPUC Wastewater Enterprise Ten-Year Capital Improvement Program and authorized the SFPUC General Manager or his or her designee to enter into this Umbrella MOU with the District and subsequent Site Agreements in a manner consistent with all applicable Laws.
- F.** On _____, 2024, by Resolution No. _____, City’s Board of Supervisors authorized City, through the SFPUC, to enter into this Umbrella MOU and subsequent individual Site Agreement(s) and Site Operations and Maintenance Agreement(s) with the

District in substantially the forms on file with the Clerk of the Board of Supervisors in File No. _____ on _____, 2024; on [date], the Mayor approved Board Resolution No. _____.

- G. On _____, 2024, by Resolution No. _____, the San Francisco Board of Education approved this Umbrella MOU and authorized the District's Superintendent and/or his or her designee to enter into this Umbrella MOU and to subsequently seek approval from the Board of Education for individual Site Agreement(s) and Site Operations and Maintenance Agreement(s) and with City through its SFPUC.
- H. The Parties now desire to enter into this Umbrella MOU to set forth their understandings and agreements relating to a framework for installing and operating Green Infrastructure on Project Sites.

AGREEMENT

NOW, THEREFORE, City, through the SFPUC, and the District agree as follows:

Article 1

DEFINITIONS

Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

1.1 "35% Design" means that phase in the design process of each proposed Green Infrastructure Project when the design team has defined the major design elements of the proposed Project and refined, narrowed, or focused its scope, schedule, and budget. At 35% Design, the scope of a proposed Project is determined.

1.2 "65% Design" means that phase in the design process of each proposed Green Infrastructure Project when the design team has developed plans and specifications of the proposed Project in sufficient detail to fully coordinate the major scope elements.

1.3 "95% Design" means that phase in the design process of each proposed Green Infrastructure Project when the project design, including plans and specifications, is deemed completed although still subject to review comments by applicable governmental permitting agencies (if any).

1.4 "AAR" means an "Alternatives Analysis Report" to be prepared in connection with the design of each proposed Green Infrastructure Project to identify the preferred alternative(s) that best meet(s) the objectives of the proposed Project.

1.5 "ADA" means the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), as it may be amended from time to time.

1.6 "Agents" when used with respect to each Party means the agents, employees, officers, contractors, subcontractors and representatives of the Party in relation to this Umbrella MOU and the Project Sites.

1.7 “**Approved Plans**” means the final plans and specifications for a proposed Green Infrastructure Project that are finally approved pursuant to the process described below in **Article 5** [Site Evaluation, Selection, Planning, and Design].

1.8 “**Approved Schedule**” means the schedule contained in, or developed pursuant to, a Site Agreement that sets forth the sequencing and staging of all construction activities on the Project Site.

1.9 “**Basic Umbrella MOU Information**” means the summary attached in chart form immediately preceding the text of this Umbrella MOU

1.10 “**Bond Project**” means a project managed by the District.

1.11 “**CER**” means a Conceptual Engineering Report to be prepared in connection with the design of each proposed Green Infrastructure Project.

1.12 “**CDE**” means California Department of Education, an agency of the State of California

1.13 “**Claims**” means any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind.

1.14 “**City**” means the City and County of San Francisco, a municipal corporation.

1.15 “**Commission**” means the SFPUC’s governing Commission.

1.16 “**Contractor**” means each general contractor and/or individual contractor(s) retained by City pursuant to a Construction Contract to install and construct all or a portion of the approved Green Infrastructure Project contemplated by a corresponding Site Agreement.

1.17 “**Construction Contract**” means a contract entered into between City and a Contractor that provides for installing and constructing all or a portion of a Green Infrastructure Project contemplated in a Site Agreement.

1.18 “**Default**” has the meaning assigned to such term in **Section 12.1** [Events of Default] below.

1.19 “**District**” means the San Francisco Unified School District, a California public school district.

1.20 “**District Associate Superintendent of Operations or designee**” means the individual engaged by the District who is responsible for the planning, direction, and management of the operations of the District’s Facilities Services Department.

1.21 “**District Project Representative**” means one or more Agents designed by the District to represent its interests in the assessment, design, construction, monitoring, and maintenance activities in connection with Green Infrastructure installed pursuant to a Site Agreement.

1.22 “**DSA**” means the Division of the State Architect, an agency of the State of California

1.23 “Effective Date” means [DATE], this agreement will not be effective until District’s Board of Education has approved it.

1.24 “Environmental Laws” means any Law relating to industrial hygiene, environmental conditions, or the handling, use, storage, disposal, or remediation or clean-up of Hazardous Materials.

1.25 “Expiration Date” means the earlier of (a) the day before the fortieth (40th) anniversary of the Effective Date or (b) the date of expiration or termination of the last unexpired and unexpired Site Agreement.

1.26 “Final Completion” means, with respect to a Green Infrastructure Project and any associated Non-Project Improvements, that the installation and construction of such Project and associated Non-Project Improvements are final and complete.

1.27 “Green Infrastructure” means all stormwater management components owned and maintained by City and/or the SFPUC that are or will be installed on Project Sites pursuant to a Site Agreement. Green Infrastructure does not include Other Project Site Improvements or Non-Project Improvements or any fee interest or ownership in the Project Site.

1.28 “Green Infrastructure Project” or “Project” means the certain capital improvements, including the construction and installation of Green Infrastructure, Other Project Site Improvements, and Non-Project Improvements, that City constructs on District Sites pursuant to a Site Agreement. Green Infrastructure Project does not include any fee interest or ownership in the Project Site.

1.29 “GI - Interagency Team” means individual City and District staff to be identified in each Site Agreement, who will meet periodically during the applicable Site Agreement Term as stated in **Section 2.4** [Ongoing Communication, Coordination, and Conflict Resolution] below to review the condition and performance of the Green Infrastructure installed pursuant to the applicable Site Agreement, discuss interim problems or concerns that may arise, and devise solutions to problematic conditions.

1.30 “Hazardous Material” means (a) any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the air, water, soil, or environment and (b) any materials, substances, products, byproducts, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, byproducts, or waste may give rise to liability under any Environmental Laws. “Hazardous Materials” include any material or substance identified, listed, or defined as a “hazardous waste,” “hazardous substance,” “pollutant,” “contaminant,” or term of similar import, or is otherwise regulated pursuant to Environmental Laws; any asbestos and asbestos-containing materials; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

1.31 “Invitees” when used with respect to either Party means its invitees, guests, or business visitors.

1.32 “Laws” means all present and future statutes, ordinances, codes, orders, regulations, and implementing requirements and restrictions of federal, state, county, and

municipal authorities, whether foreseen or unforeseen, ordinary as well as extraordinary, as adopted or as amended. References to all Laws, including specific statutes, relating to the rights and obligations of either Party mean the Laws in effect on the Effective Date specified in the Basic Umbrella MOU Information and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time while any obligations under this Umbrella MOU or any Site Agreement are outstanding, whether or not foreseen or contemplated by the Parties.

1.33 “**Umbrella MOU**” means this Umbrella Memorandum of Understanding.

1.34 “**Milestone**” means the completion of each of the following (in this order) during the design phase of each proposed Green Infrastructure Project: the AAR, the CER, 35% Design, 65% Design, and 95% Design.

1.35 “**Other Project Site Improvements**” means improvements that City includes within a Project’s design and construction documents at the completion of the 95% Design Milestone that are neither Green Infrastructure nor Non-Project Improvements and are necessary to return the Site to the same condition as existed prior to installing the Green Infrastructure or required by code.

1.36 “**Option Term**” means a single ten (10) year extension of the Term, if agreed to by the Parties in accordance with the procedure set forth in **Section 3.3** [Option to Extend Umbrella MOU] below.

1.37 “**Non-Project Improvements**” means improvements that City coordinates and installs at the District’s expense at or adjacent to a Project Site following the District’s request and City’s approval pursuant to **Section 5.6.1** [District Requests for Additional Construction Work] below.

1.38 “**Notice of Final Completion**” means, with respect to a City construction contract, a written notice to be issued by City that signifies that the Project construction is final and complete.

1.39 “**Parties**” means the District and City and their permitted assignees or transferees under this Umbrella MOU. Each of the Parties may be referred to individually as a “**Party**.”

1.40 “**Permitted Use**” means the uses of a Project Site by City and the SFPUC and their officers, employees, and contractors permitted by this Umbrella MOU, as set forth in the Basic Umbrella MOU Information above, as such uses may be further defined pursuant to an applicable Site Agreement.

1.41 “**Preventative Maintenance**” is a set of maintenance activities performed at predetermined intervals or according to prescribed criteria before the occurrence of a failure. These activities are intended to protect the installation, reduce the probability of failure of, and prevent or eliminate the degradation of the functions of the Green Infrastructure.

1.42 “**Project Community**” means, with respect to each Green Infrastructure Project, the students and student’s families, invitees, District Agents, and others who use or are expected to frequent the Green Infrastructure Project.

1.43 “Project Site” means the portion of a Site approved for installation of Green Infrastructure, Non-Project Improvements, and Other Project Site Improvements, as identified in the applicable Site Agreement.

1.44 “Property to be Removed” means, with respect to a Project Site, the Green Infrastructure or other equipment or personal property that are identified in such Site Agreement as those to be removed by City upon surrender of the Project Site at the expiration or termination of the Site Agreement Term. Property to be Removed shall not include Other Project Site Improvements or Non-Project Improvements.

1.45 “Regulatory Agency” means any local, regional, state, or federal body with jurisdiction and responsibility for issuing Regulatory Approvals in accordance with applicable Laws.

1.46 “Regulatory Approvals” means, with respect to each Project, all agreements, permits, consents, or other approvals required by applicable Laws in order for City to install, operate, and maintain Green Infrastructure and, as applicable, Other Project Site Improvements and Non-Project Improvements on the Project Sites.

1.47 “Release” when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, installing, escaping, leaching, dumping, or disposing of Hazardous Material on, under, or about the Project Sites, other District property, or the environment.

1.48 “Remedial Maintenance” is a set of landscape maintenance activities that are performed as required, on a scheduled or unscheduled basis, to keep Green Infrastructure in proper operating condition and identify and eliminate potential failures.

1.49 “SFPUC” means the San Francisco Public Utilities Commission, an enterprise department of the City and County of San Francisco.

1.50 “SFPUC Project Manager” is the City-appointed representative whose job is to facilitate, coordinate, review, and generally represent City’s interests in all phases of the Green Infrastructure Projects.

1.51 “Site” means a parcel of real property in San Francisco, owned and operated by the District, and identified in a Site Agreement.

1.52 “Site Agreement” means an agreement substantially in the form of the attached **Exhibit A-1** that, when fully executed and delivered, shall incorporate the provisions of this Umbrella MOU and authorizes City and the SFPUC to install, operate, and maintain Green Infrastructure for the Permitted Use on a Project Site identified in each such Site Agreement.

1.53 “Site Specific Maintenance and Operations Plan” means the enforceable, unrecorded maintenance agreement to be attached as Appendix B to each Site Agreement, jointly developed by the District and SFPUC on a project-by-project basis that sets forth each Party’s operation, maintenance, and repair or replacement obligations with respect to the subject Site and the Green Infrastructure, Other Project Site Improvements, and Non-Project Improvements to be installed on such Site; provided that City shall have no obligation to operate, maintain, repair, or replace Other Project Site Improvements or Non-Project Improvements installed at a Project Site.

1.54 “Special Conditions” means those criteria and conditions contained in a document prepared by the District and provided to City in advance of bid advertisement with respect to a proposed Project Site that set forth certain contractual conditions during construction intended to protect student safety and the educational environment during construction at such Project Site.

1.55 “Standard Specifications” means SFUSD’s District Design Standard & Guidelines which provide details or material specifications for typical school-yard design elements that are applicable to all SFUSD sites.

1.56 “Subsurface Green Infrastructure” are components of Green Infrastructure that are constructed completely below grade. Typical components of the Subsurface Green Infrastructure include but are not limited to: aggregate rock storage layers, drain rock, impermeable liner/membranes, under drains and cleanouts, splash pads of fore bays, inlet structures or grates, overflow structures, overflow pipes, and sand traps. Subsurface Green Infrastructure shall not include Other Project Site Improvements or Non-Project Improvements.

1.57 “Surface Green Infrastructure” are components of Green Infrastructure Projects that are installed at or above grade. Typical components of the Surface Green Infrastructure include but are not limited to: planting, mulch, soil media, check dams, splash pads of fore bays, low flow channels, and structural curbs. Surface Green Infrastructure Improvements shall not include Other Project Site Improvements or Non-Project Improvements.

1.58 “SWPPP” means a Storm Water Pollution Prevention Plan written and developed by a qualified SWPPP developer that outlines measures to prevent debris, trash, and sediment from entering runoff.

1.59 “Term” means the term of this Umbrella MOU that commences on the Effective Date and ends on the earlier of the Expiration Date or the date of any earlier termination of the Agreement as provided in this Umbrella MOU.

1.60 “WWE” means the SFPUC’s Wastewater Enterprise.

Article 2

PURPOSE; BASIC UMBRELLA MOU INFORMATION; PERMITTED USE; RESTRICTIONS, LIMITATIONS, AND CONDITIONS APPLICABLE TO ALL PROJECT SITES

2.1 Purpose

a) Umbrella MOU

This Umbrella MOU: **(a)** sets forth policy goals shared by the Parties as a basis for the partnership outlined by this Umbrella MOU; **(b)** establishes the legal relationship and framework under which City and the District may select, design, develop, construct, and maintain Green Infrastructure, Other Project Site Improvements, or Non-Project Improvements for the Permitted Use on, over, beneath, and within a Project Site identified in a Site Agreement issued under this Umbrella MOU; **(c)** ensures the appropriate infrastructure is installed to allow for such Permitted Use activities; and **(d)** defines roles and contracting requirements based on source of funds for the Green Infrastructure Project. The Basic Umbrella MOU Information is intended to

summarize certain provisions of the Umbrella MOU and Site Agreements and is for the Parties' reference only. If any information in the Basic Umbrella MOU Information conflicts with any more specific provision of this Umbrella MOU or any Site Agreement issued under it, the more specific provision will control. This Umbrella MOU does not authorize the Permitted Use on any District property other than the Project Sites specified in fully executed, delivered, and approved Site Agreements.

b) Site Agreements

The District and SFPUC agree to work in good faith to identify suitable sites for Green Infrastructure Projects that meet SFPUC's minimum performance goals. Subject to applicable Board Policies and Administrative Regulations, the District will allow SFPUC reasonable access to potential sites to conduct preliminary design evaluations and support initial engagement with the potential Project Community and relevant District staff, as long as any disruption to students and staff is minimal. SFPUC will coordinate with SFUSD Project Manager during all site visits and engagement with the potential Project Community and use the information gathered to inform CER design.

Subject to the terms of this Umbrella MOU, approvals required by applicable Laws, and the respective requirements of each Party, if City and District decide to proceed with a Green Infrastructure Project, they will enter into a Site Agreement in substantially the form attached as **Exhibit A-1**, after the CER design review under **Section 5.4** [Project Planning] but before beginning project design under **Section 5.5** [Project Design]. The Site Agreements shall include a Site-Specific Operations and Maintenance Plan based on the model agreement attached as **Exhibit A-2**.

2.2 City Responsibilities for Costs

Except as may be provided explicitly to the contrary in this Umbrella MOU, at City's sole cost and expense, City shall pay for all costs for the planning, design, construction, construction management and construction administration of the Green Infrastructure and Other Project Site Improvements. City shall have no obligation for any costs incurred to plan, design, construct, operate, maintain, repair, or replace Non-Project Improvements. The Site Agreement will allocate the costs of maintenance of the Green Infrastructure for each Site.

2.3 District Responsibilities for Costs

Except as may be provided explicitly to the contrary in this Umbrella MOU or any Site Agreement, and subject to applicable Board Policies and Administrative Regulations, District shall pay for all costs for the planning, design, construction, and construction administration of the Non-Project Improvements and for operating, maintaining, repairing, and replacing the Non-Project Improvements and Other Project Site Improvements. The District bears no responsibility for the cost of the Green Infrastructure and maintenance of the Green Infrastructure, which will be provided by SFPUC at no cost to the District.

2.4 Ongoing Communication, Coordination, and Conflict Resolution

On or before the Site Agreement Effective Date with respect to the first Site Agreement to be executed and delivered pursuant to this Umbrella MOU, City and the District shall establish a "GI - Interagency Team," composed of staff representatives of City and the District, to evaluate

and monitor proposed and installed Green Infrastructure under this Umbrella MOU for its duration. The GI-Interagency Team shall hold regular conference calls or meetings (at least twice annually but more frequently as deemed necessary by the Parties) to: review and evaluate potential products information and the performance of the Green Infrastructure on the Project Sites, assess the goals and commitments of this Umbrella MOU, and discuss interim problems or concerns that may arise during the Term. If the GI-Interagency Team is unable to reach a solution on a particular matter, it will be referred to _____ [City Official] _____ and Bond Program Director or their respective designees for resolution. The GI-Interagency Team shall also periodically review the Umbrella MOU and propose amendments where appropriate.

2.5 Permitted Use, Restrictions, and Limitations

a) Use of Premises

Use of a Project Site shall be subject to the covenants and conditions set forth in this Umbrella MOU and each applicable Site Agreement and all applicable Laws, District Board Policies and Administrative Regulations.

b) As-Is Condition; City's Due Diligence; Disclosure of Soils or Environmental Reports or Assessments

City expressly acknowledges and agrees to enter onto and use each Project Site in its “as-is, with all faults” condition. City expressly acknowledges and agrees that neither the District nor any of its Agents have made, and District disclaims, any representations or warranties, express or implied, with respect to the physical, structural, or environmental condition of the Project Sites, the present or future suitability of the Project Sites for the Permitted Use, or any other matter relating to the Project Sites. City represents to the District that City will conduct a reasonably diligent investigation, either independently or through employees or contractors of City's choosing, of the condition of the Project Sites and of the suitability of the Project Sites for the Permitted Use, and City is relying solely on its independent investigation. City further represents that its intended use of a Project Site is the Permitted Use as described in the Basic Umbrella MOU Information.

2.6 Signage and Education

The District will consider including in each Site Agreement provisions that allow the installation of educational signage on Project Sites referencing the function of Green Infrastructure and its impact on broader watershed and sewer systems.

2.7 Maintenance Training

Managing the Green Infrastructure on public school grounds will require additional training for District facilities personnel and faculty. The City shall bear all costs to provide this training to any District personnel. Subject to the District's applicable Collective Bargaining Agreements, City and District shall collaborate to devise a training program to be included with each Site-Specific Operations and Maintenance Plan under the Site Agreements and organized to allocate duties for maintenance among school District and City staff, with separate components for faculty, students, facility managers, custodians, landscapers, trades, and potentially the broader community.

Article 3

TERM

3.1 Term of Umbrella MOU

The Term shall begin on the Effective Date and shall end on the Expiration Date, each as specified in the Basic Umbrella MOU Information unless earlier terminated in accordance with the terms of this Umbrella MOU. In addition to any terminations authorized elsewhere in this Umbrella MOU, either Party, by written notice to the other Party, may terminate this Umbrella MOU if no Site Agreement between City and SFUSD has been executed within ten (10) years of the Effective Date of this Umbrella MOU.

3.2 Term of Site Agreement(s)

Unless earlier terminated as provided in this Umbrella MOU (including the termination of this Umbrella MOU), the Site Agreement Term for each Site Agreement shall be as stated in each Site Agreement.

3.3 Option to Extend Umbrella MOU

By their mutual written agreement, the Parties may extend the Term for a single Option Term of ten (10) years.

3.4 Termination for Convenience by City

City shall have the option, in its sole discretion, to terminate this Umbrella MOU Umbrella Agreement or any Site Agreements at any time for convenience and without cause, as long as the City either completes any work under active construction or restores District's property to its original condition or better and ensures the property is safe for District use. City shall exercise this option by giving the District written notice that specifies the effective date of termination. Upon receipt of the notice of termination, the District and City shall undertake with diligence all necessary actions to effect the termination of the Umbrella MOU or any Site Agreements on the date specified by City and minimize the liability of City and the District to third parties. As of the effective date of termination, City shall have no further obligations under this Umbrella MOU or any Site Agreements, including under **Article 16** [Surrender] of this Umbrella MOU. THIS SECTION 3.4 SHALL CONTROL OVER ALL OTHER PROVISION OF THIS UMBRELLA MOU AND THE SITE AGREEMENTS.

3.5 Termination by District

- a) **Termination for Convenience.** The District shall have the option, in its sole discretion, to terminate this Umbrella MOU or any Site Agreements at any time for convenience and without cause. The District agrees to work in good faith to close out any Green Infrastructure Project. In the event of District termination of this Umbrella MOU, executed Site Agreements shall continue to survive and shall be subject to their individual termination provisions.
- b) **Termination in the Event of Sale, Lease, or other Conveyance of Project Site.** The District shall have the option, in its sole discretion, to terminate this Umbrella MOU or any Site Agreement(s) at any time in the

event of a Board action to sell, lease, exchange, or otherwise convey or dispose of all or a portion of any Project Site.

Article 4

COMPLIANCE WITH LAWS; LICENSING

4.1 Compliance with Laws

In connection with the City's installation, operation, use, maintenance, repair, or placement of Green Infrastructure at a Project Site or City's construction or installation of Other Project Site Improvements and Non-Project Improvements at a Project Site, prior to the installation of any such Green Infrastructure, Other Project Site Improvements, and Non-Project Improvements, at its own expense, City shall comply with, and obtain all necessary environmental and governmental approvals and permits required under, all applicable Laws, including the California Environmental Quality Act ("CEQA"), Division of State Architect ("DSA"), grading, zoning, design review, and other required permits or approvals, if applicable, and shall provide the District with evidence of such approvals and permits; provided, however, that to the extent any such costs are attributable to Non-Project Improvements, the City shall seek approval from the District, including an accounting, prior to such costs being incurred and upon such approval, the District will reimburse City for any such costs promptly after receipt of City's request for such reimbursement accompanied by supporting documentation reasonably acceptable to the District.

City shall at all times comply with and require all of its officers, employees, and Invitees that use, operate, maintain, or visit a Project Site during the applicable Site Agreement Term, to comply with, all applicable Laws with respect to City's performance of its obligations arising under this Umbrella MOU or any Site Agreement. In addition, City must ensure all work on each Green Infrastructure Project shall meet all applicable safety and performance standards established by applicable Laws, including, to the extent applicable, Title 24 of the California Code of Regulations, the California Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, CEQA and regulations promulgated thereunder, California Labor Code Sections 1770 to 1780, inclusive. City must ensure all maintenance and construction activities in connection with any Green Infrastructure Project implemented pursuant to any Site Agreement shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program and the Clean Water Act to prevent stormwater pollution as well as a SWPPP approved by the appropriate governing authority, if applicable. During installation of Green Infrastructure, City shall abide by the District's General and Special Conditions, as may be updated from time to time, (attached hereto as Exhibit D), as long as such conditions are not in conflict with the San Francisco Municipal Code, including without limitation Chapter 6 of the Administrative Code. The City's contracting for work at any Project Site, including without limitation any construction or design work, shall comply with the San Francisco Municipal Code, including without limitation Chapter 6 of the Administrative Code.

The City agrees to comply with all applicable state law, including without limitation the Education Code and the California Public Contract Code, except to the extent it conflicts with an applicable section of the Municipal Code. In the event of such a conflict of law, the parties agree to hold the agreement in abeyance and the City shall seek a waiver of the relevant sections of the municipal code.

City shall keep itself informed of applicable District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Umbrella MOU, and shall at all times comply with any such applicable District Board Policies and Administrative Regulations as they may be amended from time to time, including but not limited to the following: Proprietary or Confidential Information of City and District. If the City or its Contractors are obtaining student information as part of this Agreement, City shall comply at all times with the requirements of the Family Educational Records Privacy Act (“FERPA”) and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code §§ 49073 et seq.

4.2 Criminal Background

If in the performance of this agreement, City or its contractors will interact with SFUSD students, then the following provisions apply: Criminal Background Check/Subsequent Arrest Notification.

a) **Criminal Background Check – City Employees, Contractor or Sub-contractors**

(a) Prior to the commencement of services and throughout the term of this Agreement, if City or any of its employees or contractors, will have more than limited contact with SFUSD students, or interact with District students outside of the immediate supervision and control of the student’s parents or District staff, then City is required to comply with the criminal background check provisions of California Education Code § 45125.1. City must conduct criminal background checks through the California Department of Justice (“CDOJ”), including both CDOJ and Federal Bureau of Investigation (“FBI”) background checks, and must obtain subsequent arrest notification (as below), for all City employees/Contractors who will have more than limited contact with District students or will interact with District students outside of the immediate supervision and control of the student’s parents or District staff in the performance of this Agreement.

(b) City certifies that no City employee/contractor who has been convicted of a serious or violent felony as defined by California Education Code § 45125.1 (citing California Education Code § 45122.1), a sexual offense as defined by California Education Code § 44010, a controlled substance offense as defined by California Education Code § 44011, or any other offense that renders City’s proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code § 4852.01 et seq. for a serious or violent felony listed under California Education Code § 45122.1.

(c) City and/or its agents have the sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement.

(d) The District will not be responsible for the costs of the criminal background checks.

(e) City’s employees, agents, contractors, or volunteers who will have no contact or will have limited contact and will no interact with District students outside of the supervision and control of student’s parents or District staff, are not

required to meet criminal background check and subsequent arrest notification requirements.

(f) If City asserts that all of its employees, agents, contractors or volunteers will have no contact or will have limited contact and will not interact with District students outside of the supervision and control of student's parents or District staff, the District Administrator supervising this Agreement will be required to affirm that City has correctly disclosed the level of student interaction/contact associated with the services provided under this Agreement. The District's determination shall control.

(g) City will include the provision in Section in every sub-grant or subcontract for this program requiring that all subcontractors comply with these background check provisions. City shall ensure that no services are provided under this Contract prior to compliance with the provisions of Section. Correspondingly, City shall ensure it does not permit any agent or volunteer with the City to perform services under this Agreement without complying with this Section.

b) Subsequent Arrest Notification

(a) In addition to the initial criminal background check, City will obtain, and will require that all subcontractor's obtain, from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students or interact with District students outside of the immediate supervision and control of the student's parents or District staff in the performance of this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.

(b) Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students or will interact with District students outside of the immediate supervision and control of the student's parents or District staff in the performance of this Agreement has been arrested or convicted of a serious or violent felony as defined by California Education Code § 45125.1 (citing Education Code § 45122.1), a sexual offense as defined by California Education Code § 44010, or a controlled substance offense as defined by California Education Code § 44011, or any other offense that renders City's proximity to children or services to the District inappropriate City, and its subcontractors, will immediately prohibit such employee, agent, or volunteer from having any contact with District students pursuant to this Agreement, and City and its subcontractors will immediately notify the District of such arrest.

c) Without limiting any other available legal remedies, failure by City, its contractor and its subcontractors to comply with this Section may result in termination of this Agreement at the District's sole discretion.

d) City certifies that it will comply with, and will require that all contractors or subcontractors to comply with, all CDOJ fingerprint and criminal background investigation requirements of California Education Code § 45125.1 et seq., and maintain compliance throughout the duration of this Agreement with District.

e) Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

4.3 Licensing

All contractors and subcontractors of City who perform services with respect to any Green Infrastructure, Other Project Site Improvements, and Non-Project Improvements constructed, placed, maintained, or used on a Project Site pursuant to any Site Agreement shall be duly licensed in the State of California as required by applicable Laws.

Article 5

SITE EVALUATION, SELECTION, PLANNING, AND DESIGN

5.1 Design and Site Selection; Soils, Ground Water, and Hazardous Materials Reports.

City is solely responsible for the site selection and construction of each Green Infrastructure Project, and is lead on planning and design for each Green Infrastructure project, subject to review and approval of by the Associate Superintendent of Operations or designee, including the selection of any designer(s), contractor(s), or installer(s) and for all future monitoring and maintenance work undertaken at each Project Site. In selecting Sites for a Green Infrastructure Project, City shall work cooperatively with the District when determining the appropriateness of a particular school Site for the installation of a Green Infrastructure Project. Once the Parties have agreed on a particular Site for a proposed Project, City shall confirm such selection by written notice to the District. Within sixty days of such notice, unless previously delivered to City, the District shall deliver to City all findable/accessible documents then in the District's possession or control that consist of reports or testing of the soils or environmental condition of the lands on or about the Site so selected, including any such reports or test results that concern the presence or absence of Hazardous Materials on or about such Site. The City may use these documents for reference but shall not rely solely on the accuracy of the information provided.

5.2 Parties' Representatives

a) City

On a Project-by-Project basis, pursuant to each Site Agreement, City shall appoint a representative ("**SFPUC Project Manager**") to facilitate, coordinate, review, and generally represent City's interests in all phases of the Green Infrastructure Projects from pre-planning through the conclusion of the installation and construction of proposed Green Infrastructure at the relevant Project Site. City shall provide written notice to the District if City changes the designated SFPUC Project Manager.

b) District

On a Project-by-Project basis, pursuant to each Site Agreement, the District shall designate one or more of its Agents (“**District Project Representative**”) to generally represent the District’s interests in the pre-planning, design, construction, and maintenance activities taking place on the Project Sites. The District Project Representative will have sufficient general knowledge of the work being undertaken with respect to a proposed Green Infrastructure Project and, throughout the period of the design and construction of such Green Infrastructure Project, will communicate and work cooperatively with City’s representatives regarding the District’s preferences and requirements in the design, scheduling, and construction of proposed Green Infrastructure and to reasonably coordinate activities at a Project Site being used for educational and school purposes. The District shall provide written notice to City if the District changes the designated District Project Representative.

5.3 Design Consultant Selection

(a) If City engages a design consultant to design a proposed Green Infrastructure Project, City shall consider the following evaluation criteria for selecting from the design consultant candidates, although City may base its decision on additional criteria, except to the extent these criteria conflict with any federal or state funding requirements:

- DSA review process experience;
- Bay Area public school district schoolyard design experience;
- Green Infrastructure design experience;
- Design process experience involving engagement with the public and local communities;
- Design consultants that are also listed on the District’s Bond Program Architect Pool; and
- Other qualifications that City determines are reasonably acceptable.

(b) The District may designate representatives to participate in the design consultant selection process who may review and make reasonable comments on design solicitations. The District may propose one representative to participate in any selection panels, which the City shall consider, subject to a reasonable right of refusal.

(c) If the City’s design includes features that require DSA approval, the City must ensure compliance with DSA regulatory approval process, and District shall not bear any cost of Green Infrastructure Project design work to facilitate DSA or any other regulatory approvals.

5.4 Project Planning.

The Alternatives Analysis Report (“**AAR**”) and Conceptual Engineering Report (“**CER**”) phases comprise the City’s typical project planning process. The CER document requires the signatures of the Project engineer, Project manager, the SFPUC’s Wastewater Enterprise (“**WWE**”), the Project engineering manager, and the client representatives from the WWE and District before the Project team may proceed with the project design phase. With respect to the planning of each proposed Green Infrastructure Project, the District shall review and comment upon each of the following milestone events as applicable: (a) AAR and (b) CER, in accordance with the procedures set forth in **Section 5.5.2** [Project Design Review Process] below.

The District’s Bond Program has an adopted set of Procedures and Standards (“**District Standards**”) that guide implementation of all projects facilitated by the Bond program. Green Infrastructure Projects will generally be treated as Green Schoolyard Projects, and the District’s interaction with design professionals will generally follow the process laid out in Section 2.5(a) of the District Bond Program Standards.

5.5 Project Design.

a) District Standard Specifications and Special Conditions

Following approval of the CER and no later than the completion of the 35% Design documents for each proposed Green Infrastructure Improvements Project, the District shall deliver Standard Specifications and submit its Special Conditions with respect to such Project. The District’s form Special Conditions are attached hereto as Exhibit D. Depending on the scope and scale of each proposed Green Infrastructure Project, the District will prepare special contract conditions consisting of measures required to protect students, District employees, contractors, and the educational environment during construction at a Project Site (“**Special Conditions**”). If the District does not prepare Special Conditions, the document in Exhibit D shall be attached to the Site Agreement. City shall be responsible for integrating the District’s Special Conditions that pertain to child safety, working hours limitations, and project phasing into the construction documents, informing the District of any conflicting language, and resolving any conflicting language. The District shall reasonably cooperate to resolve conflicting requirements, which shall be provided to City during the Design Review Period (Defined in **Section 5.5.3** [Design Review] below). If the District’s Standard Specifications change during the design phase, then City will consider implementing any reasonable changes requested by the District, so long as such changes do not increase the cost to the design or construction.

b) Project Design Review Process

Once selected and retained by City, the design consultants will design the proposed Green Infrastructure Project and adhere to the District Standards and District’s Standard Specifications submitted to City prior to the District’s approval of the 35% Design for such Project. The District shall review and comment within thirty (30) days on design documents upon the completion of each of the following milestone events (each, a “**Milestone**”): completion of 35% Design, completion of 65% Design, and completion of 95% Design. The District will be invited to take part in regularly scheduled, bi-weekly design meetings that take place between these Milestones.

c) Design Review

Upon completing each Milestone, City shall provide electronic submittals of the relevant design documents related to such Milestone to the District for its review and approval. The District shall provide consolidated written comments in the SFPUC comment review log within thirty (30) days (the “**Design Review Period**”) of the District’s receipt of each set of Milestone documents to be reviewed. The District Project Representative shall be responsible for identifying, coordinating, and soliciting comments from the District’s internal stakeholders within the design review period of each Milestone. The City shall not unreasonably withhold incorporating and addressing the District’s comments and concerns.

5.6 District-Initiated Work

a) District Requests for Additional Construction Work

Once City selects a proposed Project Site, the District may request in writing that City coordinate and perform certain construction work not within the scope of the proposed Project (“**Non-Project Improvements**”) and not necessitated by the proposed Project at the District’s expense in areas reasonably adjacent to a Project Site. At its sole discretion, City may agree or decline to design, install, and construct the proposed Non-Project Improvements, whenever requested. City will provide cost estimate, which the District must authorize prior to implementing Non-Project Improvements. If City agrees to design, install, and construct the proposed Non-Project Improvements, a description of the work, its cost and such other pertinent information regarding such work as is appropriate shall be reflected in the applicable Site Agreement or an amendment to such Site Agreement. The District shall reimburse City for the costs of the requested additional work (including all labor, material costs, and all costs in obtaining any required permits or approvals of the installation and construction of the proposed Non-Project Improvements) promptly after receipt of City’s invoice(s) regarding such work along with supporting documentation reasonably acceptable to the District. Nothing in this Umbrella MOU requires the District to request or agree to any Non-Project Improvements.

5.7 Construction Management

The City will engage construction management personnel who will be responsible for ensuring that the Project is constructed according to the approved plans and specifications. From the time the contractor mobilizes to substantial completion, a member of the construction management team will be on the Project Site whenever the Contractor is present. The construction management team will have the sole responsibility to direct the Contractor, and has a central role in communication with the project team and site staff. The construction management team will be responsible for providing weekly construction schedule updates to District and site staff, coordinating construction activities with intermittent school events, and promptly communicating with District and site staff regarding construction issues that impact student health, safety or instruction.

Article 6

PRE- CONSTRUCTION REGULATORY APPROVALS

6.1 Pre-Construction Regulatory Approvals

Prior to commencing construction of each proposed Green Infrastructure Project, City shall obtain all Regulatory Approvals, authorizations, and permits required under any applicable Laws in connection with such Project from the DSA and all other governmental agencies with jurisdiction over the Project Site (which may include the CDE and its affiliated agencies, and the California State Water Resources Control Board). Regulatory compliance is further detailed in the form of Site Agreement in **Exhibit A-1**.

DSA has jurisdiction over access compliance requirements for all buildings, structures and related facilities on SFUSD properties. For access compliance, the building standards published in the State Building Standards Code relating to access by the physically handicapped and the other regulations adopted by the DSA must be used as the minimum requirements to ensure that all improvements are accessible to, and functional for, the physically disabled. DSA compliance is the responsibility of City for each proposed Green Infrastructure Project.

6.2 Environmental Review

Except for feasibility or planning tasks, no Project Site construction or installation work may commence prior to completion of all environmental review necessary for the Green Infrastructure Project as required by applicable Laws, including CEQA, and any necessary approvals from any local authority including any site, grading, zoning, design review, and other required permits or approvals, if applicable.

6.3 Construction General Permit

To the extent and in the manner required by applicable Laws, in connection with any proposed Green Infrastructure Improvements, City shall adhere to the State Water Resources Control Board Requirements and when required obtain a “Construction General Permit” from the State Water Resources Control Board and develop a SWPPP that outlines measures to prevent debris, trash, and sediment from entering runoff. Any Contractor selected by the SFPUC to construct such Project shall be required to implement the SWPPP.

Article 7

BID AND AWARD; CONSTRUCTION CONTRACT RESPONSIBILITIES

7.1 Construction Contract Responsibilities

Promptly after the final design plans and specifications for a proposed Green Infrastructure Project are approved pursuant to the process described in **Article 5** [Site Evaluation, Selection, Planning and Design] above (the “**Approved Plans**”), and all Regulatory Approvals required for construction of such proposed Green Infrastructure Project are granted or obtained, including CEQA, City, unless otherwise assigned in the applicable Site Agreement, shall advertise and award the construction of the Green Infrastructure Project according to the process outlined in the form of Site Agreement in **Exhibit A-1**, and substantially in the form of the agreement in **Exhibit C** (Form Construction Contract) included herein, and in compliance with applicable codes, including without limitation Chapter 6 of the San Francisco Administrative Code. City, unless otherwise assigned in the applicable Site Agreement, shall enter into a written construction contract or contracts (each, a “**Construction Contract**”) with a general contractor and/or individual contractors as necessary (each, a “**Contractor**”) in accordance with applicable contracting requirements.

7.2 Insurance and Indemnity

(a) Each Construction Contract shall require the Contractor to obtain a policy of commercial general liability insurance and a comprehensive auto liability policy with the same or greater limits as required by the applicable Site Agreement. The Contractor shall furnish City and District with the original certificates, naming the District and City as additional insureds and including any amendatory endorsements affecting coverage and waiver of subrogation as required by written contract prior to commencing construction of the Green Infrastructure Project.

(b) Each Construction Contract shall require the Contractor to indemnify hold harmless, and defend the District, its Board, officers, employees and agents against any and all claims, demands, liabilities, losses, damages, judgments, costs and expenses (including legal fees

and costs of investigation) arising out of Contractor's performance of the Construction Contract with City, including but not limited to claims for personal injury, death, property damage, loss of profits, and infringement of intellectual property rights.

(c) Each Construction Contract shall require Contractor to fully indemnify the City to the maximum extent provided by law, such that each Contractor must save, keep, bear harmless and fully indemnify the City and any of its officers and employees from any and all liability, damages, claims, judgments or demands for damages, costs or expenses in law or equity that may at any time arise.

(d) Any Construction Contract that City enters into to construct the Green Infrastructure Project shall require the Contractor to obtain a policy of commercial general liability insurance, a comprehensive auto liability policy, and a Worker's Compensation policy with the same or greater limits as required of City under the Site Agreement, and with a waiver of subrogation. The Contractor shall furnish City and the District with the original certificates, naming the District and City as additional insureds and including any amendatory endorsements affecting coverage as required by written contract prior to commencing construction of the Green Infrastructure Project.

(e) Each Contractor shall be required to carry "Builder's Risk" or "Course of Construction" insurance to protect the interests of the District, City, and the Contractor by covering property under construction as well as equipment and materials to be installed.

(f) Waiver of Subrogation. The insurance policies required under this Agreement, including without limitation the Workers' Compensation policy(ies), shall be endorsed with a waiver of subrogation in favor of the City and the District for all work performed by the Contractor, its employees, agents, subgrantees, and subcontractors.

(g) City shall administer and resolve any claims or disputes with the City's Contractors arising out of Green Infrastructure Projects.

7.3 Project Management

(a) During the course of installing and constructing a proposed Green Infrastructure Project (including any Other Project or Non-Project Improvements), the designated SFPUC Project Manager and the District Project Representative shall serve as the single points of contact for all communications between the Parties regarding such installation and construction. In the event the District desires to communicate with the Contractor performing such installation and construction work, such communication shall be directed to the SFPUC Project Manager or his or her designee, unless otherwise assigned in the applicable Site Agreement.

(b) Prior to commencing installation and construction work for a proposed Green Infrastructure Project, the SFPUC shall coordinate and conduct, in collaboration with the District, a training session to explain to the SFPUC construction management personnel the requirements for working on each Project Site, and the SFPUC construction management team shall use good faith efforts to enforce such requirements. This training does not relieve the Contractor of any obligation included in the Construction Contract.

(c) Prior to commencing installation and construction work for a proposed Green Infrastructure Project, the SFPUC shall engage a DSA Approved Project Inspector and Special Inspector to perform material testing and inspections required for DSA Project Certification. From time to time during the course of approved installation and construction work at a Project Site, City shall provide written notice to the District regarding the status of such installation and construction work and will generally notify the District of (1) inspections, material testing, or other construction milestones and (2) any material delays in the Approved Schedule that are anticipated to materially delay the anticipated completion date for a Green Infrastructure Improvement Project or any Non-Project Improvements. All construction activity shall comply with the Construction Contract, including applicable provisions of the District's general and special conditions. Any requests for information, proposed change orders, or other questions arising during construction that impact instruction, student health, safety, or that pertain to Other Project Site or Non-Project Site Improvements... shall be brought by the SFPUC to the Associate Superintendent of Operations or designee for review and approval, which shall not be unreasonably withheld. If the District fails to promptly review any such item within ten (10) business days, and the City determines in good faith that the lack of prompt review could lead to a compensable delay under the Construction Contract, then the City may proceed without the District's approval on such item with a final 24-hour written notice provided to the District

Article 8

SUBSTANTIAL COMPLETION OF PROJECT AND DISTRICT ACCEPTANCE

8.1 Substantial Completion and Punch List

When the Contractor with respect to a Green Infrastructure Project notifies City of its assertion that the installation and construction of such Green Infrastructure Project, including any associated Other Project or Non-Project Site Improvements are substantially complete, City will coordinate with the District Representative to schedule the punch list inspection. The City's Contractor shall be present at the punch list inspection. The District and the SFPUC Representatives will identify, and the City will document, any detected deficiencies to create a punch list. City Representative will obtain the District Representative's approval prior to issuing a Notice of Substantial Completion, which approval by District will not be unreasonably delayed or withheld. The Notice of Substantial Completion shall have the punch list attached.

8.2 Final Completion

When the Contractor notifies City of its assertion that it has completed all items of work on the punch list and seeks a determination that the installation and construction of such Green Infrastructure Project and any associated Non-Project Improvements are complete, City will notify the District Project Representative and coordinate with the District Representative to schedule a final walkthrough. The SFPUC Representative will obtain the District Representative's written approval prior to issuing Notice of Final Completion, which approval by District will not be unreasonably delayed or withheld.

8.3 DSA Certification

City shall obtain all required DSA approvals. For projects requiring DSA approval, City shall request a Pre-Application meeting and invite District to attend. City shall coordinate DSA

BOX access with the District, and shall comply with all DSA requirements, including payment of additional fees, required for DSA Project Certification.

8.4 Deliverables

Within one hundred eighty (180) days of the issuance of a Notice of Final Completion of a Green Infrastructure Project, City shall provide the District with electronic copies of all pertinent operations and maintenance documents as required by the Construction Contract, any relevant warranty information, electronic PDF and AutoCAD files of the As-Built/Record Drawings, evidence of compliance with any and all governmental or regulatory codes and regulations, certificates of inspection for any features holding such requirement, and any additional information relating to such Project that may be of beneficial use to the District in the term of this Umbrella MOU.

Article 9

POST-CONSTRUCTION OPERATION AND MAINTENANCE

9.1 Operation and Maintenance; Title to Green Infrastructure, Other Project Site Improvements, and Non-Project Improvements

The Site Agreement and Site-Specific Operations and Maintenance Plan will specify roles for operation, maintenance, repair, and replacement of any project features. Generally, unless otherwise specified in the Site Agreement or Site-Specific Operations and Maintenance Plan, City will operate, maintain, and, subject to the provisions of **Article 10** [Damage or Destruction], repair and replace all Green Infrastructure Improvements and District will operate, maintain, and subject to the provisions of **Article 10** [Damage or Destruction], repair and replace all Other Project Site Improvements and Non-Project Improvements. City may fund operation, maintenance, repair, and replacement with its own staff, with contracted staff, or with District staff, subject to the Site Agreement or Site-Specific Operations and Maintenance Plan and applicable training outlined in **Section 9.2** [Green Infrastructure Training Program].

Upon the issuance of a notice of Final Completion, title to all Green Infrastructure installed at or adjacent to any Project Site shall automatically vest in the City; while the City has title to the Green Infrastructure, the City does not have any title or ownership interest in District's property or Project Site. In no event, does the City's title to the Green Infrastructure supersede the District's rights outlined in **Section 3.5(b)** [Termination in the Event of Sale, Lease, or other Conveyance of Project Site]. For the avoidance of doubt, in the event of termination of this Agreement or any Site Agreement by the District, title to the Green Infrastructure covered by the terminated Agreement(s) shall vest with the District and the City shall have no further rights under the terminated Agreement(s). Upon the issuance of a notice of Final Completion, title to all Other Project Site Improvements or Non-Project Improvements installed at or adjacent to any Project Site shall automatically vest in the District. In no event shall any Site Agreement bestow any ownership interest in District's property/Project Site.

9.2 Green Infrastructure Training Program

Prior to completing and accepting each Green Infrastructure Project, the District and City shall work cooperatively to identify and implement training opportunities for the District project

management and maintenance staff regarding Green Infrastructure preventative and remedial maintenance best practices, which shall be provided by the City. Training of District maintenance staff regarding Green Infrastructure maintenance will not impact the Parties' allocation of such responsibilities and obligations under this Umbrella MOU and the Site Agreement. From time to time, City will identify SFPUC staff qualified to address any potential maintenance questions that arise during the Term and provide their contact information to the District. The site specific training program will be described in the Site-Specific Operations and Maintenance Plan.

Article 10

DAMAGE OR DESTRUCTION

10.1 Damage or Destruction of Green Infrastructure

With respect to each Green Infrastructure Project, the District shall (a) to the extent feasible, protect the Green Infrastructure from disturbance and damage caused by use of the Green Infrastructure by students and student's families, Invitees, District Agents, and others (with respect to each such Green Infrastructure Project, collectively, the "**Project Community**") and shall work jointly with City to determine whether any damage to the Green Infrastructure Project caused by the Project Community can be repaired or replaced; (b) partner with, identify, and educate the Project Community regarding the Green Infrastructure installed at such Project Site; and (c) minimize post-construction disturbance or damage by any member of the Project Community to the Green Infrastructure. In the event that damage to the Green Infrastructure Project from the Project Community occurs, the District agrees to facilitate at least one (1) timely community event to support ongoing education and stewardship at the project location. District further agrees to repair or replace, or reimburse the SFPUC for reasonable costs, subject to advance notice and approval of the costs, the SFPUC incurs to repair or replace, any damage or destruction of Green Infrastructure caused by a District employee or Facilities Department contractor subject to the approval, appropriation and availability of funds by the District's Board of Education. District agrees that it will act in good faith in seeking Board of Education approval of these expenditures.

If all or any portion of the Green Infrastructure on a Project Site are damaged or destroyed by any cause outside the City's or District's control, within one hundred eighty (180) days of City's knowledge of such damage or destruction, City shall endeavor to give the District written notice (a "**Damage Disposition Notice**") of City's determination and the District agrees with such determination (such agreement shall not be unreasonably withheld) of one of the following:

(a) that such Green Infrastructure are repairable or replaceable, that City has allocated, or expects to allocate, adequate funds necessary to fund such repairs or replacements, that the then-condition and then remaining useful life of such Green Infrastructure justify the expense of repairing or replacing such Green Infrastructure, and that City has therefore determined that it will repair or replace the damaged or destroyed Green Infrastructure;

(b) to not repair or replace the damaged Green Infrastructure because the damage to the Green Infrastructure is not sufficiently significant that it requires decommissioning or removal, and the damage will not adversely affect District or District's use of the Project Site, and that the use of such damaged Green Infrastructure shall continue pursuant to this Umbrella MOU and the applicable Site Agreement; or

(c) City's determination to not repair or replace the damaged or destroyed Green Infrastructure and that the damage to the subject Green Infrastructure Project requires the decommissioning or removal of the damaged Green Infrastructure as contemplated in **Article 16** [Surrender] below.

After Other Project Site Improvements or Non-Project Improvements are accepted by the District, City shall have no obligation to repair or replace any damaged or destroyed Other Project Site Improvements or Non-Project Improvements, unless and except to the extent caused by the negligence or willful misconduct of the City or its officers, employees or representatives. Although the District may elect, at its sole discretion, to not repair or replace any damaged or destroyed Other Project Site Improvements or Non-Project Improvements, it will hold City and its officers and employees harmless and indemnify City for any Claims to the extent based on any damage or destruction to Other Project Site Improvements or Non-Project Improvements that is the subject of this Section 10.1. The District may assert Claims against City's Contractor(s) based on allegations of defective construction or installation of any Other Project Site Improvements or Non-Project Improvements (whether or not destroyed or damaged).

10.2 Notice of Damage to the Project Sites

The District shall give City notice of the destruction of, any damage to, or the need to repair any Green Infrastructure on a Project Site promptly and no later than 30-days after discovery.

10.3 City's Election

(a) Election to Repair or Replace Destroyed or Damaged Green Infrastructure

If, pursuant to **Section 10.1(a)** [Damage or Destruction of Green Infrastructure Improvements] above, City gives a Damage Disposition Notice to the District that City has determined to repair or replace any damaged or destroyed Green Infrastructure on a Project Site, City shall use reasonable efforts to implement such repairs or replacement in a timely manner. If, however, City is unable to complete such repair or replacement for any cause within the timeframe agreed upon by City and District, City shall notify the District and cooperate with District to outline a reasonable plan and timetable to complete the repairs or replacement. If City has not repaired or replaced the damaged or destroyed Green Infrastructure within one (1) year of the date of City's notice, either City or the District may terminate the Site Agreement with respect to such damaged or destroyed Green Infrastructure by written notice to the other Party.

(b) Election to Continue to Operate Damaged Green Infrastructure

If, pursuant to **Section 10.1(b)** [Damage or Destruction of Green Infrastructure] above, City gives a notice to the District that City has determined to not repair or replace the damaged Green Infrastructure because the damage to the subject Green Infrastructure Project did not sufficiently diminish Project performance that it requires the decommissioning or removal of the damaged Green Infrastructure, then the use of such damaged Green Infrastructure shall continue pursuant to this Umbrella MOU and the applicable Site Agreement. The City must demonstrate, to the satisfaction of the District, that the damaged Green Infrastructure will not adversely affect District or District's use of the Project Site. District must approve any

determination to continue use of damaged Green Infrastructure. If the District does not approve the City’s determination, the City shall proceed with an election under Section 10.1(a) or Section 10.1(c). Further, the City shall hold the District, its officers, employees and students harmless and indemnify District for any Claims to the extent based on any damage or destruction to the Green Infrastructure that is the subject of this Section 10.3.

(c) **Election to Decommission or Remove Damaged Green Infrastructure**

If, pursuant to **Section 10.1(c)** [Damage or Destruction of Green Infrastructure] above, City gives a Damage Disposition Notice to the District that City has determined to not repair or replace the damaged or destroyed Green Infrastructure because the damage to the subject Green Infrastructure Project requires the decommissioning or removal of the damaged Green Infrastructure, then (i) the Site Agreement with respect to such damaged or destroyed Green Infrastructure shall terminate effective thirty (30) days after the District’s receipt of such Damage Disposition Notice and (ii) the damaged or destroyed Green Infrastructure shall be removed (if they were identified in the Site Agreement as Property to be Removed) or decommissioned pursuant to the procedures described in **Article 16** [Surrender] below, unless otherwise agreed to by the District in writing.

(d) **Premises upon termination or surrender**

The City shall either return the Site to a condition substantially similar to its prior state, or leave the Site in an improved state, subject to Article 22 [SFPU Property to be Removed or Modified] of the Site Agreement.

Article 11 [RESERVED]

Article 12

DEFAULTS

12.1 Events of Default

An event of default (a “**Default**”) under this Umbrella MOU shall occur when one of the Parties (a “**Breaching Party**”) fails to comply in a material manner with any of its obligations or representations made under this Umbrella MOU or any Site Agreement, if the failure continues for ninety (90) days after the date that the Breaching Party receives notice from the other Party (a “**Nonbreaching Party**”) specifying such failure, or, if such default is not capable of cure within the ninety (90)-day period, the Breaching Party fails to promptly undertake action to cure such failure within such ninety (90)-day period and thereafter fails to use reasonable diligence to complete such cure within one hundred eighty (180) days after the Nonbreaching Party’s notice.

12.2 Remedies

Upon the occurrence of an uncured Default, in addition to all other rights and remedies available to a Nonbreaching Party at law or in equity, the Nonbreaching Party may (a) continue this Umbrella MOU and applicable Site Agreements in effect, with the right to enforce all of its

rights and remedies or (b) elect to terminate the Site Agreement, if any, to which any such Default directly relates, after the City and the District have met to discuss the status of the uncured Default.

Article 13

INSURANCE AND BONDS

13.1 Self-Insurance

Each Party acknowledges that the other Party self-insures against casualty, property damage, and public liability risks. Each Party shall maintain an adequate program of self-insurance or insurance, as applicable, for public liability risks during the Term and will not be required to carry any third-party insurance with respect to the Project Sites or otherwise. The City shall name the District as an additional insured, and its respective officers, directors, employees and agents.

13.2 City's Contractors

Insurance requirements for City Contractors are discussed in **Section 7.2** [Insurance and Indemnity].

13.3 General Contractors' Bonds

City shall require its Contractors that install, maintain, repair, replace, or otherwise perform work on the Project Sites to provide bonds to guarantee the performance of the work and the payment of subcontractors and suppliers for any installation of Green Infrastructure. The Contractor should obtain a Performance and Payment Bond with penalties equal to one hundred percent (100%) of the contract price as determined from the prices in the bid form. The bond amount may be adjusted from time to time as necessary to cover and satisfy all payment obligations arising from the contract. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. If Contractor breaches the Construction Contract, and fails to cure its breach, the City shall make a claim on the Performance Bond and enforce all applicable rights. A failure to enforce by the City that results in damages to the District shall constitute a material breach of this Umbrella Agreement.

Article 14

INDEMNITY

Except as otherwise specifically stated in this Umbrella MOU or a Site Agreement, City shall defend, indemnify, and hold the District and its Agents harmless from and against any and all Claims that arise in any manner out of the performance of City or its contractors, officers or employees of City's obligations under this Umbrella MOU or any Site Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the City or its contractors, officers, employees, or representatives.

Except as otherwise specifically stated in this Umbrella MOU or a Site Agreement, the District shall defend, indemnify, and hold City and its officers and employees harmless from and against any and all Claims that arise in any manner out of the performance of the District or its Agents of the District's obligations under this Umbrella MOU or any Site Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the District or its Agents.

Article 15

LIMITATION OF LIABILITY FOR CONSEQUENTIAL DAMAGES

City and District expressly acknowledge and agree that this Umbrella MOU does not consider any potential liability of either City or District for consequential or incidental damages. Neither City nor District would be willing to enter into this Umbrella MOU or any Site Agreement in the absence of a complete waiver of liability, to the fullest extent permitted by Law, for consequential or incidental damages to the extent resulting from the acts or omissions of City or its officers or employees or of District or its Agents, and the Parties each expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of either Party or other waivers contained in this Umbrella MOU and as a material part of the consideration for this Umbrella MOU, City and District each fully releases, waives, and discharges the other forever for any and all Claims for consequential and incidental damages arising out of this Umbrella MOU or any Site Agreement, including lost profits arising from the disruption to Green Infrastructure, any interference with use in connection with this Umbrella MOU and Site Agreements, regardless of the cause, and whether or not due to the active or passive negligence or willful misconduct of City or its contractors, subcontractor, officers or employees, or District or its Agents, and the Parties covenant not to sue one another for such damages.

Article 16

SURRENDER

16.1 Obligations Upon Surrender.

Unless otherwise stated in an applicable Site Agreement, within one hundred eighty (180) days of the termination or expiration of this Umbrella MOU, at its own cost, City shall remove the Property to be Removed identified in any Site Agreement as those that are to be removed upon surrender of the subject Site. Similarly, unless otherwise stated in an applicable Site Agreement, within one hundred eighty (180) days of the termination or expiration of a Site Agreement, at its own cost, City shall remove the Property to be Removed from the subject Site. With respect to any Site where some of the Green Infrastructure are not included in the Property to be Removed, City shall make necessary modifications if required to any such Green Infrastructure so as to render the Site suitable for use by District employees and students, and safe for occupation. Further, in no event will the City leave the Site in a worse condition than it was prior to the Green Infrastructure Project. At the very least, the City shall return the Site to a condition substantially similar to its original condition or better. City shall have no obligation to remove or modify any Other Project Site Improvements or Non-Project Improvements. City's obligations under this Article will survive the Expiration Date or other termination of this Umbrella MOU.

Article 17

HAZARDOUS MATERIALS

In the performance of its obligations under this Umbrella MOU or any Site Agreement, neither City nor any of its officers or employees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, installed, disposed of, or released in, on, under, or about the Project Sites or any other part of District property, or transported to or from any District property in violation of Environmental Laws, except that City may use small quantities of Hazardous Materials as customarily used and needed for construction, routine operation, cleaning, and maintenance of the Green Infrastructure, so long as all such Hazardous Materials are contained, handled, and used in compliance with Environmental Laws. City shall immediately notify the District if and when City learns or has reason to believe any Release of Hazardous Material has occurred in, on, under, or about the Project Site. City shall be responsible for remediating any such Release of Hazardous Material.

Prior to initiating any construction activity, the City will complete a hazardous materials survey in compliance with applicable regulations. If hazardous materials are encountered in the Project Site, the City may either terminate the Site Agreement or comply with all hazardous materials handling, transportation, remediation and disposal requirements, regulations and applicable state and federal laws.

Article 18

GENERAL PROVISIONS

18.1 Successors and Assigns

This Umbrella MOU shall be binding upon and inure to the benefit of the Parties and their respective directors, officers, legal representatives, successors, and assigns.

18.2 Notices

Any notice given under this Umbrella MOU will be effective only if in writing and delivered in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: **(a)** a Party at the address set forth in the Basic Information with respect to such Party, or **(b)** to any other address that either Party designates as its new address by notice given to the other in accordance with the provisions of this Section at least ten (10) days before the effective date of the change. A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one Party to the other shall be for convenience of communication only; neither Party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or facsimile copy of the notice.

18.3 Amendments

No part of this Umbrella MOU may be changed, waived, discharged, or terminated orally, nor may any breach thereof be waived, altered, or modified, except by a written instrument executed and approved in the same manner as this Agreement.

18.4 Tropical Hardwoods and Virgin Redwoods.

RESERVED.

18.5 Notification of Limitations on Contributions.

The District acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City, whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. The District acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. The District further acknowledges that the prohibition on contributions applies the District; each member of the District's governing boards, and the District's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than ten percent (10%) in the District; any subcontractor listed in the contract; and any committee that is sponsored or controlled by the District. Additionally, the District acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Upon City's request, the District shall provide to City the names of each person, entity, or committee described above.

18.6 MacBride Principles - Northern Ireland.

The provisions of San Francisco Administrative Code Section 12F are incorporated into and made a part of this Umbrella MOU by this reference. By signing this Umbrella MOU, the District confirms that it has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

18.7 No Implied Waiver

No failure by a Party to insist on the strict performance of any obligation of the other Party under this Umbrella MOU or any Site Agreement or to exercise any right, power, or remedy arising out of a breach, regardless of the length of time that the breach continues will constitute a waiver of the breach or of the Party's right to demand strict compliance with any term, covenant, or condition or operate as a surrender of its rights under this Umbrella MOU or any Site Agreement. No express written waiver of any default or the performance of any provision of this Umbrella MOU or any Site Agreement will affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Umbrella MOU or any Site Agreement will not be deemed to be a waiver of a subsequent default or performance. Any Party's consent under this Umbrella MOU or any Site Agreement will not relieve the other Party of any obligation to secure the consenting Party's consent in any other or future instance as required by this Umbrella MOU or any such Site Agreement.

18.9 Assignments

Neither Party may directly or indirectly (including by merger, acquisition, or other transfer of any controlling interest in a Party), voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to this Umbrella MOU or any Site Agreement, without the other Party's prior written consent.

18.10 Nondiscrimination.

In the performance of this Umbrella MOU, the District will not discriminate against any employee, any City employee working with the District, or applicant for employment with the District, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes.

18.11 Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection by City immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available by City to the public on request.

18.12 Conflicts of Interest

Through its execution of this Umbrella MOU, the District acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and California Government Code Section 87100, *et seq.*, and Section 1090, *et seq.*, and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if the District becomes aware of any violation during the Term, the District will immediately notify City.

18.13 Recording

Neither Party shall record this Umbrella MOU, any Site Agreement, nor any memorandum or short form of any of them in City's Recorder's Office.

18.14 Counterparts

This Umbrella MOU may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will be one and the same instrument.

18.15 Authority to Approve Agreement

Each person signing this Umbrella MOU and any Site Agreement on behalf of the Parties warrants and represents that he or she has the full right and authority to enter into this Umbrella

MOU and Site Agreements. This Umbrella MOU shall only become effective upon approval of the District's Board of Education.

18.16 No Authority to Make Representations on Behalf of the Other Party

Neither Party, nor any Agent of a Party, is authorized to make any representations on behalf of the other Party.

18.17 Interpretation of Agreements

The following rules of interpretation apply to this Umbrella MOU.

(a) **General**

Whenever required by the context, the singular includes the plural and vice versa; the masculine gender includes the feminine or neuter genders and vice versa; and defined terms encompass all correlating forms of the terms (e.g., the definition of "indemnify" applies to "indemnity," "indemnification," etc.).

(b) **Captions**

The captions preceding the articles and sections of this Umbrella MOU and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Umbrella MOU.

(c) **Words of Inclusion**

The use of the term "including," "such as," or words of similar import when following any general or specific term, statement, or matter may not be construed to limit the term, statement, or matter to the stated terms, statements, or matters, whether or not language of non-limitation, such as "including, but not limited to" and "including without limitation" are used. Rather, the stated term, statement, or matter will be interpreted to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter.

(d) **Severability**

If any provision of this Umbrella MOU or its application to any person, entity, or circumstance is invalid or unenforceable, the remainder of this Umbrella MOU, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each provision of this Umbrella MOU will be valid and be enforced to the full extent permitted by applicable Laws, except to the extent that enforcement of this Umbrella MOU without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Umbrella MOU.

(e) **Governing Law and Venue**

This Umbrella MOU must be construed and enforced in accordance with the laws of the State of California and City's Charter without regard to the principles of conflicts of law. This Umbrella MOU is made, entered, and will be performed in San Francisco. Any action concerning this Umbrella MOU must be brought and heard in San Francisco.

(f) **Entire Agreement**

This Umbrella MOU, including all its attached exhibits and schedules (which are hereby incorporated into this Umbrella MOU), contains the entire agreement between the Parties, and all prior written or oral agreements regarding the same subject matter are merged into this document. The Parties further intend that this Umbrella MOU, all Site Agreements, and all exhibits and schedules will constitute one agreement that contains the complete and exclusive statement of its terms and that no extrinsic evidence (including prior drafts and revisions) may be introduced in any judicial, administrative, or other legal proceeding involving this Umbrella MOU. Each Party hereby acknowledges that neither such Party nor its officers or employees have made any representations or warranties with respect to the Project Sites or this Umbrella MOU except as expressly set forth herein, and no rights, easements, or additional Agreements are or will be acquired by City by implication or otherwise unless expressly set forth in this Umbrella MOU or a Site Agreement.

(g) **Time of Essence**

Time is of the essence with respect to all provisions of this Umbrella MOU in which a definite time for performance is specified.

(h) **Survival**

Expiration or earlier termination of this Umbrella MOU will not affect the right of either Party to enforce any and all indemnities and representations and warranties given or made to the other Party under this Umbrella MOU, or any provision of this Umbrella MOU that expressly survives termination.

(i) **Applicable Laws**

For avoidance of doubt, the District is governed by the DSA and Education Code. The City agrees to comply with all applicable state law, including without limitation the Education Code and the California Public Contract Code, except to the extent it conflicts with an applicable section of the Municipal Code. In the event of such a conflict of law, the parties agree to hold the agreement in abeyance and the City shall seek a waiver of the relevant sections of the Municipal Code. The Parties agree that the City, as a charter city, may procure the Construction Contracts pursuant to and in compliance with San Francisco Administrative Code Chapter 6.

(j) **Cooperative Drafting**

This Umbrella MOU has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters this Umbrella MOU addresses and was drafted through a cooperative effort of both Parties, each of which has had an opportunity to have this Umbrella MOU reviewed and revised by legal counsel. No Party will be considered the drafter of this Umbrella MOU, and no presumption or rule (including that in Cal. Civil Code § 1654) that an ambiguity will be construed against the Party drafting the clause will apply to the interpretation or enforcement of this Umbrella MOU.

[SIGNATURES ON FOLLOWING PAGE]

The City and District have executed this Umbrella MOU as of the date last written below.

CITY:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation,
operating by and through its PUBLIC
UTILITIES COMMISSION

By: _____
Dennis Herrera
General Manager

Date: _____

DISTRICT:

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT, a California public school district

By: _____
Its: _____

By: _____
Its: _____

Date: _____

Approved by SFPUC Resolution
No. _____ and

Board Resolution No. _____

APPROVED AS TO FORM:

DAVID CHIU,
City Attorney

By: _____
Tyson Arbuthnot,
Deputy City Attorney

APPROVED AS TO FORM:

By:

Sr. Deputy General Counsel, SFUSD

EXHIBIT A-1

FORM OF SITE AGREEMENT

EXHIBIT A-2

FORM OF SITE-SPECIFIC OPERATIONS AND MAINTENANCE PLAN

EXHIBIT B-1

GREEN INFRASTRUCTURE MAINTENANCE GUIDELINES

EXHIBIT B-2

DISTRICT'S MAINTENANCE LEVEL OF SERVICE

EXHIBIT C
FORM OF CONSTRUCTION CONTRACT (City)

EXHIBIT D

DISTRICT GENERAL AND SPECIAL CONDITIONS