

LEASE-LEASEBACK AGREEMENT

Dated as of May 20, 2020

Between

Chabot-Las Positas Community College District

and

Flint Builders, Inc.

**Chabot-Las Positas Community College District
New Academic Support & Office Building
At Las Positas College**

LEASE-LEASEBACK AGREEMENT

NEW ACADEMIC SUPPORT & OFFICE BUILDING LAS POSITAS COLLEGE

THIS LEASE-LEASEBACK AGREEMENT (this “Agreement”) is entered into as of May 20, 2020 between the Chabot-Las Positas Community College District, a California Community College District (the “District”), and Flint Builders, Inc., a California [corporation] and licensed general contractor (the “Contractor”). District and Contractor are each a “Party” and together are the “Parties” to this Agreement.

WHEREAS, The District intends to construction a **NEW ACADEMIC SUPPORT & OFFICE BUILDING at LAS POSTIAS COLLEGE** ("Project"), ("Site").

WHEREAS, In order to optimize the work that needs to be done for the construction, the District has determined that it is necessary to begin work as soon as possible so that the Project can be performed in a timely, cost-effective, and cooperative manner to meet the District’s compressed time schedule for the planned completion and use by the College.

WHEREAS, The District intends to undertake a construction project as described generally in Article 1 and **Exhibit A1** below, at the College (the “Project”).

WHEREAS, California Education Code Section 81335 permits the governing board of a Community College District to enter into this lease-leaseback agreement.

WHEREAS, In connection with the approval of this Agreement, actual construction of the Project be contingent on Contractor's receipt of the Notice to Proceed with Construction from the District, and the District will enter into a separate site lease agreement with Contractor (the “Site Lease”), under which it will lease the Project site described and depicted in **Exhibit A1** of the Site Lease (the “Site”) to Contractor in order for Contractor to construct the Project as described in the Scope of Work set forth in **Exhibits A and B** to this Agreement (the “Scope of Work”).

WHEREAS, Contractor will lease the Site and the Project back to the District pursuant to a separate Facilities Lease Agreement (the "Facilities Lease"), under which the District will be required to make lease payments to Contractor for the use and occupancy of the Site, including the Project.

WHEREAS, Upon completion of the Project or termination of this Agreement, the Site Lease and Facilities Lease automatically will terminate and title to the Site and Project automatically will vest with the District.

WHEREAS, The District and Contractor desire to enter into this Agreement to ensure that the Project will meet the District’s expectations prior to the lease of the Site back to the District pursuant to the Facilities Lease.

WHEREAS, Contractor is experienced in the construction of the type of School and type of work desired by the District and is willing to perform said construction work for the District, all as more fully set forth this Agreement.

The District and Contractor therefore agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project, all in strict compliance with the plans, drawings and specifications for the Project prepared by the District's Architect and the other Contract Documents relating to the Project.

In accordance with California Public Contract Code Section 3300, Contractor has Class "A," "B," "C21," and "C-8" licenses that Contractor shall maintain in good standing for the duration of Contractor's work on the Project.

ARTICLE 2. PROJECT PHASES. Planning and construction of Project shall occur in phases. Phase I shall consist of planning and design services, and Phase II shall consist of construction of the facilities. Phase I shall commence upon execution of this Agreement, and Phase II shall be contingent on Contractor's receipt of the Notice to Proceed with construction from the District. In the event the District and the Contractor do not establish and agree upon Guaranteed Maximum Price ("GMP") and Project Schedule for the construction phase of the Project or otherwise elect not to proceed to Phase II of the Project, the Developer Fee (provided in Article 1 paragraph 12) shall constitute the sole financial obligation of District for Phase I services.

A. Phase I. Preconstruction Activity, Schedule and GMP Development.

Pursuant to this Agreement, Contractor shall provide pre-construction development and related services required during the Project's design and approval phases. Such services shall commence upon approval of this Agreement by District. Contractor shall perform the services described in this Article within the time frames established by the District. The purpose of Phase I is to establish and agree upon Guaranteed Maximum Price ("GMP") and Project Schedule for the construction phase of the Project.

- i. **Contract Price.** The Preconstruction Phase Services Contract Price is the Not-to-Exceed sum of Two Hundred Thousand Two Hundred Eight Dollars and Sixty-Six Cents (\$200,208.66)

Preconstruction services shall consist of the following:

1. Site Evaluation. Contractor shall perform an evaluation of the sites for the Project and make recommendations relating to scope, constructability, and schedule of the Project. Contractor shall also review the scope of necessary demolition work, if any, to develop a hazardous materials removal plan. The purpose of this evaluation is to improve the Project's design and minimize unforeseen conditions. At District's request, Contractor shall provide the results of its evaluation in written form to the District.

2. Constructability Review. Contractor shall provide a constructability review of the Plans and Specifications prior to issuing documents for subcontractor bids.

a. Overview. Contractor shall review the plans and specifications and related construction documents for errors and omissions, clarity, consistency, and coordination. Contractor's review shall emphasize ensuring that the Project can be completed within the District's available budget to the level of quality and educational goals desired, and can be completed within the established schedule. If practicable the Contractor shall review the drawings at each phase of development, including Design and Construction phases.

b. Contractor Recommendations. Contractor shall specifically provide recommendations on construction feasibility, energy conservation, availability of materials and labor, time requirements for installation and construction, and factors related to cost, including costs of alternative designs of materials, preliminary budgets, and possible economies of scale. Contractor shall provide written reports, identifying by page and detail the issues to be discussed and resolved by the Project Team.

c. Value Engineering. As part of the constructability review, Contractor shall identify areas where value engineering principles could be applied (including potential cost savings and the schedule impact of such savings), and identify items requiring a long lead time before construction. Contractor shall assist the District in considering operating or maintenance costs with respect to selecting systems and products for the Project.

3. Design/Coordination Meetings. Contractor shall be responsible for facilitating all design/coordination meetings as needed. Such meetings shall include participation of design professionals and specialty subcontractors.

4. Schedule. Contractor shall develop a master critical path method ("CPM") project schedule for the Project that shall include all milestone dates for the Project, including submittal of Contractor's GMP proposal for each Project phase, completion of design development, submittal of all estimates contemplated by this Agreement, re-submission of the plans and specifications to DSA (if necessary), anticipated re-approval by DSA (if any), finalization of Lease-Leaseback Documents, construction sequencing and durations, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurements, phasing, and District move-in. Contractor's schedule shall be submitted to the District for approval at a date to be established by the parties. The District shall have the right to request reasonable changes and updates in the schedule. Contractor shall provide schedule updates with each estimate, or more often if reasonably requested by the District or if required in Contractor's judgment to communicate changes in market conditions.

5. Cost Estimates. Contractor shall provide an initial estimate of total Project cost, as well as necessary updates to that estimate. Contractor's initial estimate shall be due to the District within two weeks of completion of its review of the Construction Documents. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA and at any other time required or reasonably necessary pursuant to this Agreement. Contractor's cost estimate shall identify all trades and unit costs and shall also identify all allowances, contingencies, and allowable general condition costs and fees. If any cost estimate submitted to the District exceeds a previously

approved estimate, the District and the Contractor shall work together to determine appropriate recommendations for reducing the estimated cost of the Project, including changes in scope, changes in materials, change in sequence, etc.

6. Selection of Subcontractors. Contractor shall conduct a competitive process for the selection of subcontractors for construction of the Project. Contractor agrees that it will either solicit bids from subcontractors pursuant to the competitive bid procedures set forth in the Public Contract Code, or that it will utilize an informal bidding process established by the Contractor and approved in advance by District. Contractor shall make every reasonable effort to ensure that it receives at least three competitive bids from subcontractors for each trade component of the Project. Contractor shall inform all bidders for subcontracts that the District will not be a party to any contracts for construction services executed by the Contractor and selected bidders.

District reserves the right to oversee the bidding process, and in no case will the Contractor award any subcontracts until the District has concurred with the selection, scope, and price of the subcontracted services. Contractor shall submit a listing of proposed subcontractors with associated breakdown of bid values to the District for the District's review. In addition, at the District's request, Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by the Contractor. In no event shall such documentation be redacted or obliterated.

Following District's concurrence with the selection, scope, and price of subcontracted services, Contractor shall not make any changes in same without District's express written approval of the proposed changes, which approval shall be in District's sole discretion. District may terminate this Agreement if Contractor does not comply with this provision.

7. RESERVED.

8. Construction Planning and Schedules. Contractor shall provide assistance to District in construction planning, including phasing, staging, sites logistics, sequencing, fencing, office locations and means and methods of construction. The objective of this step will be to develop an overall program strategy as relates to timing, budgets, construction materials, means and methods and the program interface during construction. The Contractor shall:

(a) provide a preliminary evaluation of the District's schedule, cost and design requirements for the Project;

(b) develop an anticipated construction schedule pursuant to paragraph 4 above;

(c) develop a preliminary cost estimate for each type of work contemplated by the Project pursuant to paragraph 5 above;

(d) clarify and delineate the Architect's, the Contractor's, and the District's respective duties and responsibilities; and

(e) set forth a plan for the administration and coordination of all work on the Project, including pre-construction meetings.

The Architect and District shall review the above for acceptance. Contractor will also ensure that all work complies with the guidelines established by the State of California Department of General Services and any other Federal or State agencies having jurisdiction over the Project.

9. Licensing and Approvals. Contractor shall assist District in obtaining all local and State licenses, permits, requirements, and approvals including, but not limited to, approval from the Division of the State Architect (“DSA”), approval from the Department of General Services, and the requirements of the California Environmental Quality Act.

10. Minutes. Contractor shall make a written record of all pre-construction meetings, conferences, discussions and decisions made between or among the Architect, District, District’s agents or consultants, Contractor and Contractor’s consultants during all pre-construction phases of the Project and concerning any material condition in the requirements, scope, performance, and sequence of the work.

11. Establishing GMP and Milestone Schedule. Contractor shall negotiate with District a GMP for the construction of the Project and a milestone schedule. Once completed, these shall be presented to the Governing Board for final approval and upon approval, shall be attached as **Exhibit D** to the Facilities Lease, and the related scope of work will be attached and incorporated herein as **Exhibit A**, with any related exclusions shall be concurrently finalized in a document attached as **Exhibit B**. The parties recognize that there may be multiple phases of work, and anticipate that **Exhibits A, B, and D** will be amended from time to time.

Pursuant to the duties identified above, Contractor acknowledges that it will investigate the site prior to finalization of the GMP, to the extent necessary to complete the Project and to prepare its Guaranteed Maximum Price. Contractor further acknowledges that prior to the finalization of the GMP it will perform value engineering and a constructability review of the Plans and Specifications as necessary to satisfy itself that said documents are adequate for the Project’s construction. Contractor further acknowledges that prior to finalization of the GMP it will have satisfied itself that there are no errors or omissions in the Plans and Specifications that will adversely affect construction of the Project.

In light of the foregoing, Contractor shall cause the Project to be constructed within the GMP as shall be finalized and inserted as **Exhibit D**. Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the express provisions of the Contract Documents, including those things reasonably inferable from the Plans and Specifications as being within the scope of the Project and necessary to produce the stated result, within the GMP. Contractor will not seek additional compensation from the District.

12. Notice to Proceed or Contractor’s Total Cost of Services for Phase I. Contingent on satisfactory completion of Phase I, including approval of the Plans and Specifications by the District and any necessary governmental agencies, and the establishment of a mutually agreeable GMP (“GMP”), District may deliver **Exhibit C**, Notice to Proceed to the Contractor (See **Exhibit C**, General Conditions, Document 00 55 00). The District shall not be responsible to Contractor for any claims or damages resulting from District’s failure to enter into Phase II. In the event the District and the Contractor elect not to proceed to Phase II of the Project, the Contractor will be paid only the Preconstruction Services Fee in accordance with the Pre-Construction Services Agreement, which shall constitute the sole financial obligation of District for Phase I services.

B. Phase II. Upon commencement of the Phase II, Contractor agrees to cause the Project to be constructed and installed in accordance with the Construction Provisions which are attached hereto as **Exhibit C**. The Contractor agrees that it will cause the construction and installation of the Project to be diligently performed. The District and the Contractor may approve changes in the plans and specifications for the Project as provided in the Construction Provisions. The Contractor will cooperate at all times with the District in bringing about the timely completion of the Project. The definition and description of the Project contained herein may be amended by the District from time to time as provided in the Construction Provisions, Extra Work/Modifications.

C. Validation. Notwithstanding any provision in the Site Lease, Facilities Lease, or any other Contract Document with District, Contractor's actual construction work, and the work or calendar days allowed for completion, shall not commence until at least Thirty days (30) days following the authorized vote of the District's governing board to approve and enter into this agreement with Contractor. Nothing herein will prevent Contractor from performing preconstruction work prior to the expiration of the 30-day period.

In the event any proceeding is filed that contests, directly or indirectly, the validity of this Agreement, including any of the Contract Documents, whether pursuant to Code of Civil Procedure section 860, et. seq., or any other regulation, statute, ordinance, or law (hereinafter referred to as a "Reverse Validation Action"), Contractor's rights and obligations under this agreement and any of its part may be immediately be suspended and/ or terminated for convenience, at District or Contractor's option. If either party elects to terminate for convenience, Contractor's compensation shall be in accordance with the Termination for Convenience provisions of the parties' agreement.

ARTICLE 3. CONTRACT DOCUMENTS. The Contractor and the District agree that this Agreement, all of the documents listed in Article 1.1.1 of the General Conditions attached as **Exhibit C** (the "General Conditions"), the Site Lease, and the Facilities Lease, together form the "Contract Documents," which form the "Contract."

ARTICLE 4. TIME TO COMPLETE AND LIQUIDATED DAMAGES.

A. Time is of the essence. Time is of the essence in this Contract, and the time of completion for this Project shall be as set forth in **Exhibit D** to be attached in this agreement upon finalization of the plans and specifications and guaranteed maximum price.

B. Liquidated Damages. Failure to complete the Project, or applicable phases of the Project, within the date(s) and in the manner provided for by the Contract Documents, shall subject the Contractor to liquidated damages of **\$2,000** for each calendar day by which completion of the Project, or applicable phases thereof, is delayed beyond the Date for Completion as may be adjusted by change orders, as further provided in **Exhibit C**, General Conditions.

ARTICLE 5. CHANGES. Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in **Exhibit C**, the General Conditions.

ARTICLE 6. TERM AND TERMINATION. The term of the Contract (the "Lease Term") begins on the date shown on page 1 above and end twelve months after the Project is Complete.

During the final twelve months, the District shall occupy and enjoy the Project during the term of the Facilities Lease. During the final twelve months, the District shall pay the Financed Amount to Contractor on the terms set forth in the Facilities Lease.

During the final twelve months, the Contractor shall provide a skilled and trained staff member to assist the District with the startup, warranty period, and training of faculty, staff and administrators for a minimum of 8 hours per week. The skilled and trained staff member shall be approved by the District in advance and shall check in daily while on site with the District Project Manager and/or Maintenance Supervisor and assist as necessary in the installation of owner furnished items, correction of warranty issues, scheduling of training or training of staff members on the operation and control of building systems. Payment for services shall be included in the Financed Amount to Contractor on the terms set forth in the Facilities Lease.

All of the covenants, representations and warranties set forth in the Contract, including indemnification obligations, that are intended to bind the Parties after the completion of the Project or termination of the Contract will survive such completion or termination for the periods provided for in the Contract or otherwise allowed by law.

The District or Contractor may terminate the Contract as provided in the General Conditions. The Site Lease and the Facilities Lease each shall automatically end at the same time as this Agreement, with the Parties' respective leasehold interests thereunder automatically ended and released, and title to the Site and Project automatically and fully vested in the District.

ARTICLE 7. PREVAILING WAGES. The Project is a public work, the Work shall be performed as a public work, and under California Labor Code Section 1770 *et seq.*, and as provided in **Exhibit C**. As a public work, the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In order to be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104, or enter into, or engage in the performance of any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code), a contractor or subcontractor must be currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code.

ARTICLE 8. WORKING HOURS. The work performed pursuant to this Agreement is subject to the California Labor Code Sections 1810 to 1815, as further provided in **Exhibit C**, General Conditions.

ARTICLE 9. APPRENTICES. The Contractor shall comply with California Labor Code Sections 1777.5 and 1777.6 regarding apprentices and as further provided in **Exhibit C**, General Conditions.

ARTICLE 10. RESERVED.

ARTICLE 11. DSA OVERSIGHT PROCESS. The Contractor must comply with the applicable requirements of the Division of State Architect ("DSA") Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) notifying the Inspector of Record ("IOR") upon commencement and completion of each aspect of the work as required under DSA Form 156; (b) coordinating the Work with the IOR's inspection duties and requirements; (c) submitting verified reports

under DSA Form 6-C; and (d) coordinating with the District, District's Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor's wrongful actions or omissions. If inspected work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected work is subject to removal and correction, at Contractor's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

ARTICLE 12. RESERVED.

ARTICLE 13. RESERVED.

ARTICLE 14. RESERVED.

ARTICLE 15. INDEMNIFICATION, INSURANCE, AND BONDS. The Contractor will defend, indemnify and hold harmless the District, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the California Labor Code and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the District with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the District will receive 30 days' notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage, and the amount of automobile liability insurance shall be at least \$1,000,000 per accident for bodily injury and property damage combined single limit.

Contractor shall provide the bonds set forth in **Exhibit C**, the General Conditions, including performance and payment bonds.

ARTICLE 16. ENTIRE AGREEMENT. The Contract Documents identified in Article 3 constitute the entire agreement between the Parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, unless such agreement is expressly incorporated herein. The District makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to California Code of Civil Procedure section 1856.

ARTICLE 17. EXECUTION OF OTHER DOCUMENTS. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE 18. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE 19. BINDING EFFECT. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

ARTICLE 20. SEVERABILITY. If a court of competent jurisdiction shall hold any provision of the Contract invalid or unenforceable, then such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Tulare, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by District.

ARTICLE 21. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the District’s Governing Board.

ARTICLE 22. ASSIGNMENT OF CONTRACT. The Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the written consent of the District.

ARTICLE 23. WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the Contractor for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

ARTICLE 24. TERMS NOT DEFINED. Capitalized terms used in this Agreement that are not otherwise defined have the same meaning as in the General Conditions.

ARTICLE 25. PARTIES BOUND BY AGREEMENT. Each person signing this Agreement below warrants and guarantees that he or she is legally authorized to execute this Agreement on behalf of the listed Party and that such execution binds that Party to the terms and conditions of this Agreement.

CONTRACTOR:
Flint Builders, Inc.
a California corporation

DISTRICT:
Chabot Las Positas Community College District

BY: _____

BY: _____

TITLE: _____

TITLE: _____

EXHIBIT A1-A3 to Lease-Leaseback Agreement – Scope of Work

Chabot-Las Positas Community College District

Name of Project / Campus Location

The Total Facilities Lease Amount is based on the plans, specifications, drawings, and design packages prepared by District's architects. The detailed Scope of Work is set forth in the plans, specifications, drawings, and design packages approved by the Division of State Architect as referenced in **EXHIBIT D** hereto and incorporated herein by this reference.

EXHIBIT B to Lease-Leaseback Agreement – Exclusions

Chabot-Las Positas Community College District

Name of Project / Campus Location

The Parties hereby agree that the following items of work are not included in the Scope of Work for the Project:

**[ANY EXCLUSIONS SHALL BE INSERTED CONCURRENTLY WITHIN EXHIBIT A
AND EXHIBIT D]**

EXHIBIT C – Lease-Leaseback Agreement – General Conditions

EXHIBIT D- Lease-Leaseback Agreement – GMP and Project Completion Schedule

Chabot-Las Positas Community College District

Name of Project / Campus Location

The Parties hereby agree that the following document is Contractor's calculation of the Total Facilities Lease, Amount including the construction contingency.

The Parties agree that the following document also includes the date of completion for each phase of construction, as applicable.