



Fountain Valley School District

BOARD OF TRUSTEES  
REGULAR MEETING

**AGENDA**

Board Room  
10055 Slater Avenue  
Fountain Valley, CA

**June 13, 2013**

- CALL TO ORDER: 6:15PM
- ROLL CALL
- APPROVAL OF AGENDA

M \_\_\_  
 2<sup>nd</sup> \_\_\_  
 V \_\_\_

- PUBLIC COMMENTS

*Speakers may address the Board of Trustees on Closed Session Items. Please comply with procedures listed on the goldenrod form "For Persons Wishing to Address the Board of Trustees" and give the form to the Executive Assistant.*

- CLOSED SESSION

The Board of Trustees will retire into Closed Session to address the following:

- Personnel Matters: *Government Code 54957 and 54957.1*  
Appointment/Assignment/Promotion of employees; employee discipline/dismissal/release; evaluation of employee performance; complaints/charges against an employee; other personnel matters.
- Negotiations: *Government Code 54957.6*  
Update and review of negotiations with the FVEA and CSEA Bargaining Units with the Board's designated representative, Cathie Abdel.
- PLEDGE OF ALLEGIANCE

**SPECIAL PRESENTATIONS**

**1. COMMUNITY ADVISORY COMMITTEE EXCELLENCE IN EDUCATION AWARD PRESENTATION**

The Community Advisory Committee has created an award to recognize individuals who have encouraged others or who have received the benefits of caring individuals

*Our mission is to promote a foundation for academic excellence, mastery of basic skills, responsible citizenship, and a desire by students to achieve their highest potential through a partnership with home and community.*

in a very special way. The 3<sup>rd</sup> annual Excellence in Special Education Awards will honor 74 individuals nominated by teacher, parents and staff members. Director, Support Services, Abby Bickford will be joined by Kim Yap and Lisa Moloney in presenting these awards.

**2. PRESENTATION BY ACTION COMMITTEE FOR EDUCATION (ACE) ON SACRAMENTO SAFARI**

The Action Committee for Education (ACE) is a broad-based school community legislative action group which addresses current issues and sponsors annual projects to promote and benefit not only the Fountain Valley School District but public education in general. Representatives shall make a presentation to the Board of Trustees on ACE's recent participation in the Sacramento Safari.

**STAFF REPORTS AND PRESENTATIONS**

**3. BUDGET UPDATE (ORAL AND WRITTEN)**

Director, Fiscal Services, Scott Martin will provide an update for the Board of Trustees on the State Budget and its effect on the Fountain Valley School District.

**4. ENERGY SAVINGS PROGRAM UPDATE (ORAL AND WRITTEN)**

Assistant Superintendent, Business, Stephen McMahon will present an update for the Board of Trustees on the Energy Savings Program with Chevron Energy Solutions and the community outreach meeting held June 6<sup>th</sup> at 7pm at the District Office.

**BOARD REPORTS AND COMMUNICATIONS**

Board Members will make the following reports and communicate information to fellow Board Members and staff.

**PUBLIC COMMENTS**

*Members of the community and staff are welcome to address the Board of Trustees on any item listed on the Agenda of Business or any other item of specific concern. Speakers are requested to limit their presentation to four minutes unless the time is waived by a majority of the Board Members present. If a member of the audience requests a response to their comments, the Board of Trustees may ask the Superintendent/Staff to respond to them personally or in writing after the meeting, or direct that additional information be provided to the Board on a future agenda.*

**\*\*\* BOARD MEMBERS WHO WISH TO DISCUSS WITH STAFF ANY ITEMS LISTED UNDER LEGISLATIVE SESSION SHOULD INFORM THE BOARD PRESIDENT AT THIS TIME.**

**LEGISLATIVE SESSION**

- 5. **RESOLUTION 2013-26: ACCEPTANCE OF ADVISORY COMMITTEE RECOMMENDATION DECLARING SURPLUS PROPERTY AND PUBLIC LEASE OF PROPERTY** M \_\_\_  
2nd \_\_\_  
V \_\_\_

At the April 16, 2013 meeting of the Board of Trustees, the Board received a full report from the Surplus Property Committee recommending the Moiola School site property be retained by the District and leased in accordance with State regulations.

Superintendent's Recommendation: It is recommended that the Board of Trustees adopts Resolution 2013-26 formally declaring the Fred Moiola School as surplus property and authorize the property for public lease.

- 6. **RESOLUTION 2013-28: CHEVRON ENERGY SOLUTIONS** M \_\_\_  
2<sup>nd</sup> \_\_\_  
V \_\_\_

Resolution 2013-28 encompasses the finalized documents relating to the energy reduction plan and financing contract. Board adoption of this resolution provides all required assurances that the necessary legal requirements to enter into this energy conservation program have been met.

Superintendent's Recommendation: It is recommended that the Board of Trustees adopts Resolution 2013-28 and authorize the Superintendent or his designee to sign all documents.

- 7. **ADOPTION OF DISTRICT GOALS FOR 2013-14 SCHOOL YEAR** M \_\_\_  
2<sup>nd</sup> \_\_\_  
V \_\_\_

The District Goals were presented to the Board of Trustees in a study session held on May 16, 2012. The Board reached consensus on these goals that evening.

Superintendent's Recommendation: It is recommended that the Board of Trustees adopts the attached District Goals for the 2013-14 school year.

- 8. **ADOPTION OF BOARD INTERESTS FOR THE 2013-14 SCHOOL YEAR** M \_\_\_  
2<sup>nd</sup> \_\_\_  
V \_\_\_

The Board of Trustees first began its discussion and reached consensus on the Board Interests for the 2013-14 school year at the April 16<sup>th</sup> Board meeting.

Superintendent's Recommendation: It is recommended that the Board of Trustees formally adopt its 2013-14 Board Interests.

- 9. **CONSENT CALENDAR/ROUTINE ITEMS OF BUSINESS** M \_\_\_  
2<sup>nd</sup> \_\_\_  
V \_\_\_

All items listed under the Consent Calendar and Routine Items of Business are considered by the Board of Trustees to be routine and will be enacted by the Board in one action. There will be no discussion of these items prior to the time the Board votes on the motion unless members of the Board, staff, or public request specific items to be discussed and/or removed from the Consent Calendar.

Superintendent's Recommendation: The Board of Trustees approves all items listed under the Consent Calendar and Routine Items of Business in one action.

### **Routine Items of Business**

- 9-A.** Board Meeting Minutes from May 16<sup>th</sup> meeting
- 9-B.** Personnel Items (Employment Functions, Workshops/Conferences, and Consultants)
- 9-C.** Donations
- 9-D.** Warrants
- 9-E.** Purchase Order Listing
- 9-F.** Budget Adjustments

### **Consent Items**

#### **9-G. NOTICE OF LAYOFF FOR CLASSIFIED POSITIONS**

Superintendent's Comments: It is recommended that the Board of Trustees eliminates the services of the positions so designated on the effective date as listed in the attached memo.

#### **9-H. CONSOLIDATED APPLICATION FOR FUNDING CATEGORICAL AID PROGRAMS (PART I)**

Superintendent's Comments: It is recommended that the Board of Trustees approves transmittal of the Consolidated Application Part I to the California State Department of Education.

#### **9-I. MOU BETWEEN OCDE AND FVSD FOR SPECIAL SCHOOLS PROGRAM**

Superintendent's Comments: It is recommended that the Board of Trustees approves the MOU between the Orange County Department of Education and Fountain Valley School District.

#### **9-J. AMERICAN PSYCHIATRIC FOUNDATION GRANT**

Superintendent's Comments: It is recommended that the Board of Trustees approves the Grantee Contract for The American Psychiatric Foundation for June 1, 2013 through June 30, 2014 and authorize the Superintendent or designee to sign all documents.

#### **9-K. RECOGNITION OF FVSD TEACHERS COMPLETING TWO-YEAR BTSA INDUCTION PROGRAM**

Superintendent's Comments: It is an interest of the Board of Trustees to recognize commitment to the teaching profession and our students and therefore, the Board wishes to recognize the 14 teachers who have completed the Fountain Valley School District's rigorous two-year Induction Program and are now eligible to receive their clear teaching credential.

**9-K. RESOLUTION 2013-27: EDUCATION PROTECTION ACCOUNT (EPA)  
FUNDING AND SPENDING DETERMINATIONS**

Superintendent's Comments: It is recommended that the Board of Trustees adopts Resolution 2013-27 approving the expenditure of Education Protection Account funds to be received from the State in June 2013 and authorize the Superintendent or his designee to sign all documents.

**SUPERINTENDENT'S COMMENTS/NEW ITEMS OF BUSINESS**

The Board President will receive any announcements concerning new items of business from board members or the superintendent.

- CLOSED SESSION
- APPROVAL TO ADJOURN

**The next regular meeting of the Fountain Valley School District  
Board of Trustees is on Thursday, June 27, 2013 at 7:00pm.**

*A copy of the Board Meeting agenda is posted on the District's web site ([www.fvsd.k12.ca.us](http://www.fvsd.k12.ca.us)). Materials related to this agenda submitted to the Board of Trustees less than 72 hours prior to the meeting are available for public inspection by contacting the Superintendent's Office at 10055 Slater Avenue, Fountain Valley, CA 92708 or call 714.843.3255 during normal business hours.*

*Board meeting proceedings are tape recorded.*

*Reasonable Accommodation for any Individual with a Disability: Any individual with a disability who requires reasonable accommodation to participate in a board meeting may request assistance by contacting the Superintendent's office: 10055 Slater Avenue, Fountain Valley, CA 92708 or call (714) 843-3255 or FAX (714) 841-0356.*

FOUNTAIN VALLEY SCHOOL DISTRICT  
SUPPORT SERVICES

MEMORANDUM

TO: Anne Silavs, Assistant Superintendent, Instruction

FROM: Abby Bickford, Director, Support Services

SUBJECT: Community Advisory Committee (CAC) - Excellence in Special Education Awards

DATE: June 3, 2013 - Board Meeting of June 13, 2013

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BACKGROUND:

The Community Advisory Committee has created an award to recognize individuals who have encouraged others, or who have received the benefits of caring individuals in a very special way. The 3rd Annual "Excellence in Special Education Award" will honor approximately 74 individuals; (Special Education Teachers, General Education Teachers, Instructional Aides, Bus Drivers, students, and office staff members) who will be honored the evening of the June 13, 2013 Board Meeting.

Abby Bickford and Kim Yap will hand out the awards honoring these individuals who have been nominated by teachers, parents and staff members.

SO: 2012-13/ B13-49  
Fountain Valley School District  
Superintendent's Office

MEMORANDUM

TO: Board of Trustees  
FROM: Marc Ecker, Superintendent  
SUBJECT: **Presentation by Action Committee for Education (ACE) on  
Sacramento Safari**  
DATE: June 5, 2012

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**Background:**

On March 18-19, 2013, the Fountain Valley School District sent representatives from our schools and community to Sacramento to participate in the annual "Sacramento Safari." This yearly event allows our district representatives to meet with state lawmakers and their staff to express local concerns and ideas. The group was given the opportunity to hear from a variety of experts on state education policy, and was allowed the chance to network with parents from other school districts throughout Orange County. This PTA-sponsored event was well represented within our district.

Safari representatives shall present an oral report to the Board of Trustees on this year's exciting event.

Board Meeting of June 13, 2013

SO 2012-13/B13-50  
Fountain Valley School District  
Superintendent's Office

M E M O R A N D U M

TO: Board of Trustees  
FROM: Marc Ecker, Superintendent  
**SUBJECT: Budget Update (Oral and Written)**  
DATE: June 7, 2013

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Director, Fiscal Services, Scott Martin will provide an update for the Board of Trustees on the State Budget and its effect on the Fountain Valley School District.

Board meeting of June 13, 2013

SO 2012-13/B13-51  
Fountain Valley School District  
Superintendent's Office

TO: Board of Trustees  
FROM: Marc Ecker, Superintendent  
**SUBJECT: Energy Savings Program Update (Written and oral)**  
DATE: May 9, 2013

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**Background:**

Assistant Superintendent, Business, Stephen McMahon will present an update for the Board of Trustees on the Energy Savings Program with Chevron Energy Solutions and the community outreach meeting held June 6<sup>th</sup> at 7pm at the District Office.

**Fountain Valley School District**  
BUSINESS SERVICES DIVISION

DFS/12-13 - 28

MEMORANDUM

TO: Stephen McMahon, Assistant Superintendent, Business Services  
FROM: Scott R. Martin, Director, Fiscal Services  
SUBJECT: **Approval of RESOLUTION 2013-26 - Acceptance of Advisory  
Committee Recommendation Declaring Surplus Property and Public  
Lease of Property**  
DATE: June 6, 2013

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**BACKGROUND**

At the December 8, 2011 meeting of the Board of Trustees, the Board voted to close the Fred Moiola School. Effective as of the end of the 2011/12 school year, Moiola School located at 9790 Finch Avenue, Fountain Valley, CA was closed. The property has sat idle since its closure.

Under Education Code 17388, prior to the sale, lease or rental of any excess real property a Governing School Board must appoint an Advisory Committee to advise the Board in the development of policies and procedures for the use or disposition of school property not needed for school purposes. On January 24, 2013 the Board of Trustees approved a Surplus Property Committee tasked with submitting a recommendation to the Board of Trustees for the future use of the Moiola School property.

At the April 16, 2013 meeting of the Board of Trustees, the Board received a full report from the Surplus Property Committee recommending the Moiola School site property be retained by the District and leased in accordance with State regulations. Attached to this memorandum is a formal resolution necessary to move forward with leasing the Moiola School property to the public.

**RECOMMENDATION**

It is recommended that the Board of Trustees adopt **RESOLUTION 2013-26** formally declaring the Fred Moiola School as surplus property and authorize the property for public lease.

**RESOLUTION OF THE BOARD OF EDUCATION OF THE  
FOUNTAIN VALLEY SCHOOL DISTRICT RATIFYING ACCEPTANCE OF  
ADVISORY COMMITTEE RECOMMENDATION; DECLARING SURPLUS  
PROPERTY; AND AUTHORIZING PUBLIC LEASE OF PROPERTY**

**(FORMER MOIOLA ELEMENTARY SCHOOL)**

**RESOLUTION NO. 2013-26**

WHEREAS, the Fountain Valley School District (“District”) is the owner of approximately 12.9 acres located at 9790 Finch Avenue, Fountain Valley, California known generally as the former Fred Moiola School (“Property”) and as more particularly described in the legal description attached hereto as Exhibit “A”;

WHEREAS, the District has appointed a Surplus Property Advisory Committee pursuant to Education Code section 17388 et seq. to advise the District’s Governing Board in the development of district-wide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes, specifically the Property;

WHEREAS, said Advisory Committee held meetings on February 12, 2013, March 12, 2013 and March 24, 2013 and held a meeting and public hearing on March 12, 2013, which meetings and hearing were publicly noticed;

WHEREAS, the Advisory Committee prepared a “Report to the Governing Board,” dated April 16, 2013, regarding the Property, which includes the recommendation that the Property be declared surplus and leased in its current state, that recreation areas on the Property remain accessible to the public when not in use by the lessee, that that the lease would allow for the future reopening of the Property as a school site and that the lease would not be long-term;

WHEREAS, the Board desires to ratify prior acceptance of the Advisory Committee’s “Report to the Governing Board” and the recommendations contained therein, in general;

WHEREAS, the District will first offer the Property that includes potential classroom space for special education programs to school districts that are part of the District’s special education local plan area or the county office of education with jurisdiction over the District, pursuant to Education Code section 17465;

WHEREAS, the Property may consist of land which is used or has been used, for school playground, playing field, or other outdoor recreational purposes and the Property may be open-space land particularly suited for recreational purposes, therefore the Property may be subject to the requirements of Education Code section 17485 et seq.;

WHEREAS, prior to any lease to the public, the Property must be offered to specified public entities pursuant to Government Code section 54222;

WHEREAS, after complying with Education Code section 17465, Education Code section 17485 et seq., and Government Code section 54222, as applicable, the District desires to lease the Property in a public bid auction, pursuant to Education Code section 17466 et seq.; and

WHEREAS, interested bidders for the lease of the Property shall submit a bid proposal on a form supplied by the District.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the Governing Board of the Fountain Valley School District as follows:

Section 1. That the above recitals are true and correct.

Section 2. That the Board hereby ratifies prior acceptance of the Advisory Committee's Report to the Governing Board with respect to the Property, hereby declares the Property surplus, and hereby declares the Board's intention to offer the Property for lease.

Section 3. That, while the lease of the Property is not hereby limited in any particular manner, the District will use its best efforts to implement recommendations of the Report to the Governing Board.

Section 4. That the lease of the Property is limited to uses as provided in the lease agreement that will be included in the Bid Package.

Section 5. That the District's Superintendent or his designee is authorized and directed to send written offers for the lease of the Property that includes potential classroom space for special education programs to school districts that are part of the District's special education local plan area or the county office of education with jurisdiction over the District, and send written offers for the lease of the Property to public agencies pursuant to Education Code section 17489 and Government Code section 54222.

Section 6. That the District's Superintendent or his designee is authorized and directed to solicit proposals for the lease of the Property and advertise a bid hearing.

Section 7. That this Board, pursuant to Education Code section 17466, does hereby announce its intention to receive and consider proposals for the lease of the Property.

Section 8. That each bidder shall submit with its bid proposal a certified or cashier's check made payable to the Fountain Valley School District in the amount of Ten Thousand Dollars (\$10,000.00) as bid security for entering into the lease agreement which shall be negotiated in good faith with the District. The deposit of the successful bidder will be retained by the District and applied towards the lease of the Property pursuant to the lease agreement. After execution of the lease agreement by a successful bidder, or thirty (30) days, whichever comes first, all other deposits will be returned. If the successful bidder fails to negotiate in good faith the lease agreement with the District, the District shall retain the successful bidder's bid security.

Section 9. That the lease of the Property shall be upon the following minimum terms and conditions:

- a. The minimum bid for the lease of the Property shall be no less than the District's appraised fair market value, updated appraisal value, or minimum amount as may be determined by the Board prior to the bid hearing.
- b. The Property is leased in an "As-Is" condition.

- c. Recreational areas on the Property must remain available to the public when not in use by the lessee.
- d. Use or improvements to the Property must allow for future reopening of the Property as a school site.
- e. Lease term cannot be long-term.
- f. Bidder must provide evidence of financial ability to make lease payments.

Section 10. That Bid Proposal forms for the lease of the Property may be obtained from the District Administration Office, located at 10055 Slater Avenue, Fountain Valley, California 92708.

Section 11. That the Bid Proposals shall be sealed and filed with the District Office of the Fountain Valley School District to be opened at a specified future date and time, which date and time shall be noticed pursuant to the surplus property procedures and the law of the State of California.

Section 12. That at the bid hearing to be held at the District board room at a date to be determined by the District, the sealed Bid Proposals shall be opened, examined and declared. The District's Superintendent or his authorized designee shall then call for oral bids. If, upon the call for oral bidding, any responsible person offers to enter into said lease agreement, upon the terms and conditions specified and for a price exceeding by at least five percent (5%) the highest written proposal for the Property, then the oral bid, which is highest for the Property and that conforms to the terms of the lease agreement, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror and bid security, as described herein, in the form of a certified or cashier's check payable to the District has been submitted.

Section 13. That final acceptance of the highest bid that conforms to the terms of the lease agreement, either written or oral, will be made at the Board meeting, wherein the bids are opened or at any adjourned session of the same meeting held within ten (10) days. The Board may select the highest bid that conforms to the terms of the lease agreement of any of the bids, a counter offer or if it deems such action to be for the best public interest, it may reject any and all bids. The highest successful bidder shall be required to execute the lease agreement as a requirement for final acceptance by the Board. In the event that there are no written or oral bids made at or greater than the rental terms and conditions set forth in the lease agreement that comply with all material terms set forth therein and in the Bid Package, the District may select a counteroffer.

Section 14. That the Superintendent of the District or his designee is hereby authorized and directed to give notice of the Board's intent to lease the Property by posting executed copies of the Resolution in three (3) public places in the District not less than fifteen (15) days before the date of the bid hearing, and by publication of a Notice of Intent to Lease not less than once a week for three (3) consecutive weeks before the date of the bid hearing in a newspaper of general circulation published in the District or in the County in which the District or any part thereof is situated and having a general circulation in the County.

Section 15. That the Superintendent of the District or his designee is hereby authorized and directed to conduct the bid hearing at the date and time noticed pursuant to the intent of this resolution, and to report the results of such bid hearing to the Board at a scheduled board meeting thereafter so that a final determination regarding the success of any offer(s) or counter offer(s) received may be made by the Board.

ADOPTED, SIGNED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
President of the Governing Board of the  
Fountain Valley School District

I, \_\_\_\_\_, Clerk of the Governing Board of the Fountain Valley School District, do hereby certify that the foregoing Resolution was adopted by the Governing Board of said District at a meeting of the Governing Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and it was so adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Clerk of the Governing Board of the  
Fountain Valley School District

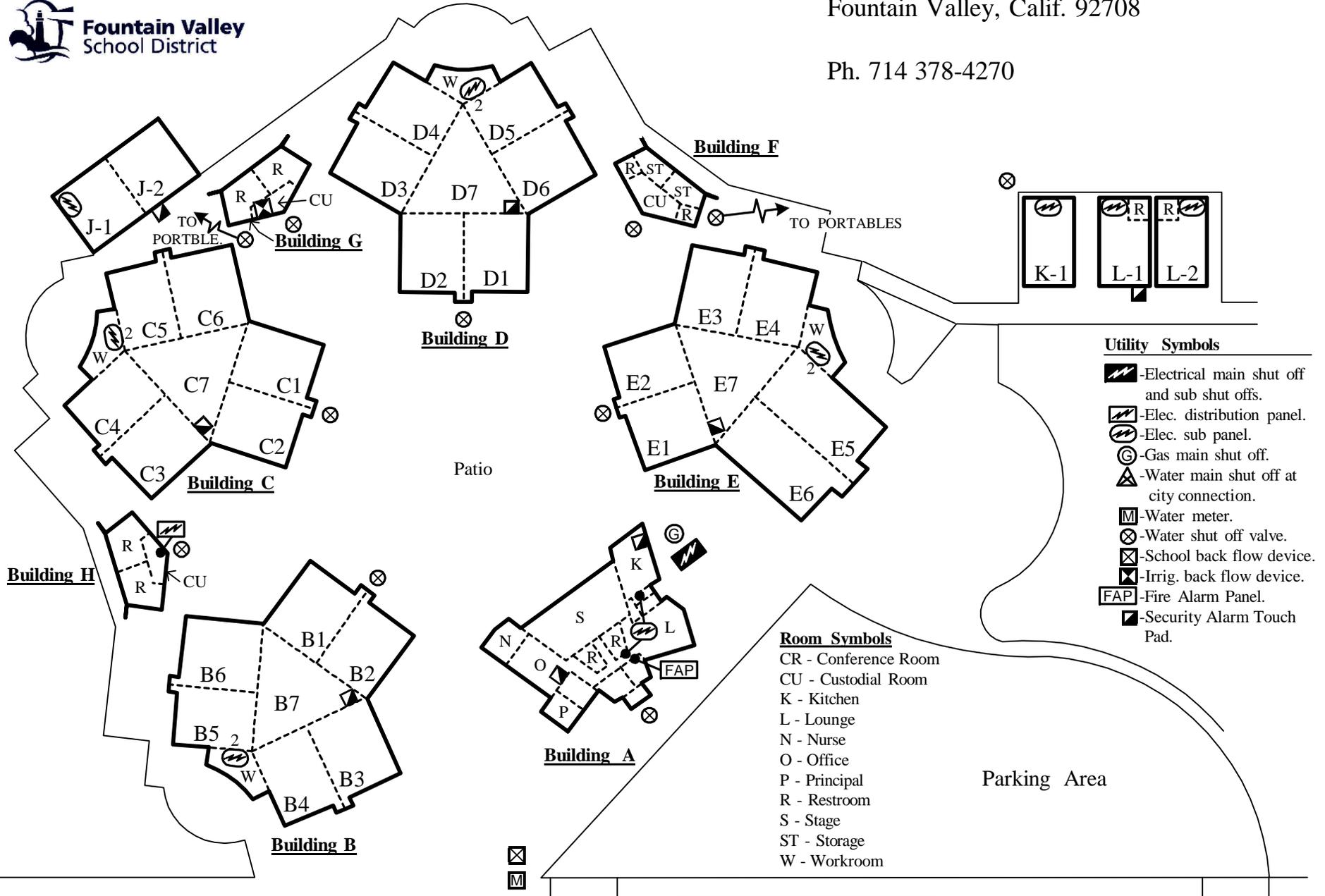
**Exhibit "A"**

Map/Legal Description of Property



**FRED MOIOLA SCHOOL**  
 9790 Finch Ave.  
 Fountain Valley, Calif. 92708

Ph. 714 378-4270



Finch Ave.



Fountain Valley School District

**BUSINESS SERVICES DIVISION**

ASB/S12-13 – 114

**M E M O R A N D U M**

TO: Marc Ecker, Superintendent  
FROM: Stephen L. McMahon, Assistant Superintendent, Business Services  
DATE: June 6, 2013  
**SUBJECT: APPROVE RESOLUTION 2013-28 CHEVRON ENERGY SOLUTIONS**

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**BACKGROUND**

Resolution No. 2013-28 encompasses the finalized documents relating to the energy reduction plan and financing contract. The contract with Chevron Energy Services has been fully vetted by our attorney and now reflects all legal requirements. The financing document with Banc of America Public Capital Corporation has also been thoroughly reviewed and revised and includes all the original terms i.e. 2.9% rate for 15years.

Board adoption of this resolution provides all required assurances that the necessary legal requirements to enter into this energy conservation program have been met. We are entering into this agreement with a guarantee of savings, with savings exceeding the cost of the financing and doing so in accordance with all laws.

Though this has been a lengthy process to come to the point of final approvals, the Board can be confident that every effort has been made to achieve the desired outcomes.

**RECOMMENDATION**

It is recommended that the Board of Trustees approve **RESOLUTION 2013-28** and authorize the Superintendent or his designee to sign all documents.

**RESOLUTION OF THE BOARD OF EDUCATION  
OF THE FOUNTAIN VALLEY SCHOOL DISTRICT  
APPROVING THE AGREEMENT FOR ENERGY CONSERVATION SERVICES  
AND THE EQUIPMENT LEASE/PURCHASE AGREEMENT  
PURSUANT TO GOVERNMENT CODE SECTION 4217.10-18, MAKING CERTAIN  
FINDINGS REQUIRED THEREFORE, AND AUTHORIZING RELATED ACTIONS**

**RESOLUTION NO. 2013-28**

WHEREAS, the Fountain Valley School District (“District”) finds it to be in the best interests of the District to implement projects to promote energy efficiency and renewable energy production to achieve energy cost reductions;

WHEREAS, Government Code sections 4217.10 through 4217.18 authorize the District’s Governing Board, without advertising for bids, to enter into one or more energy service contracts with any person or entity, pursuant to which that person or entity will provide electrical or thermal energy or conservation services to the District, which may comprise or include an energy conservation facility, if the anticipated cost to the District for thermal or electrical energy or conservation services provided under the contract(s) is less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the District in the absence of those energy service contracts (“Savings”);

WHEREAS, Government Code sections 4217.10 through 4217.18 authorize the District’s Governing Board, without advertising for bids, to enter into one or more facility financing contracts if funds for the repayment thereof are projected to be available from the Savings, representing funds that otherwise would have been used for purchase of electrical, thermal or other energy required by the District in the absence of the energy conservation services and facilities financed by proceeds available through the facility financing contracts;

WHEREAS, Government code sections 4217.10 through 4217.18 require that a public hearing be held, a public comment be taken, at a regularly scheduled meeting of the District’s Governing Board, at which meeting the District’s Governing Board may consider and adopt the findings described herein and award energy services contracts and facility financing contracts based thereon, and that notice thereof be must given at least two weeks prior to the meeting;

WHEREAS, the District gave notice of its intent to conduct a public hearing and take public comment upon the subject matter of this Resolution two weeks prior the regularly scheduled public meeting of the District’s Governing Board at which the Governing Board has held a public hearing and taken public comment and has now considered this Resolution, all as required under Government Code sections 4217.10 through 4217.18;

WHEREAS, District staff reviewed the qualifications presented by Chevron Energy Solutions Company, a Division of Chevron U.S.A., Inc., (“Chevron”) to conduct and provide assessment of school district energy usage, energy needs and opportunities to reduce energy expenses, found Chevron’ qualifications to appear bona fide and adequate;

WHEREAS, Chevron assessed the feasibility of various potential energy conservation measures to reduce the District's energy consumption and expense and recommended specific energy conservation measures based thereon ("Analysis," Exhibit A), upon which the Board and District administration and staff have relied;

WHEREAS, Chevron has offered to enter into the attached agreement ("Contract," Exhibit B) to provide energy conservation services to implement the recommended energy conservation measures for the price stated therein;

WHEREAS, the Analysis demonstrates that the cost of the Contract to the District for the thermal or electrical energy or conservation services provided thereunder is less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the District in the absence of the Contract ("Savings");

WHEREAS, the District has been presented with an Equipment Lease/Purchase Agreement (Acquisition Fund) (California Abatement) and Acquisition Fund and Account Control Agreement ("Financing Agreements," Exhibit C) by Banc of America Public Capital Corp., ("Lessor") a corporation duly organized and existing under the laws of the State of California, to secure financing of the Contract under terms beneficial to the District;

WHEREAS, the Analysis indicates that funds for the repayment of the Financing Agreements are projected to be available from the Savings, representing funds that otherwise would have been used for purchase of electrical, thermal or other energy required by the District in the absence of the energy conservation services provided under the Contract;

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE FOUNTAIN VALLEY SCHOOL DISTRICT DOES HEREBY FIND, RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein contained are true and correct.

Section 2. Energy Conservation Services Contract Findings. The District's Governing Board finds that the cost of the Contract to the District for the thermal or electrical energy or conservation services provided thereunder is less than the anticipated marginal cost to the District of thermal, electrical or other energy that would have been consumed by the District in the absence of the Contract and that it is in the best interest of the District to approve and enter into the Contract.

Section 3. Energy Conservation Services Contract Approval. The form of the Contract by and between the District and Chevron, presented herewith is hereby approved. The Superintendent or Superintendent's designee is hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver to Chevron the Contract and related documents as necessary to carry out the Contract, subject to such minor changes thereto as such officer or person may require and approve, with the approval of District counsel.

Section 4. Financing Agreements Findings. The District's Governing Board finds that funds for the repayment of the Financing Agreements are projected to be available from the Savings, representing funds that otherwise would have been used for purchase of electrical, thermal or other energy required by the District in the absence of the energy conservation services provided under the Contract.

Section 5. Financing Agreement Approval, Execution and Delivery. The form of the Financing Agreements by and between the District and Lessor, presented to this meeting and on file with the District is hereby approved. The Superintendent or Superintendent's designee is hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver to Lessor the Financing Agreements and such other financing and related documents as necessary to complete the transaction contemplated by the Financing Agreements with such changes therein as such officer or person may require and approve, such approval to be conclusively evidenced by the execution of delivery thereof.

Section 6. Effective Date: This Resolution shall take effect upon adoption.

**PASSED AND ADOPTED** as of \_\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

The President of the Fountain Valley School District Governing Board does hereby certify that the foregoing is a full, true and correct copy of the Resolution passed and adopted by the Board at a regularly scheduled and conducted meeting held on this date, which Resolution shall be kept on file in the office of the Board.

\_\_\_\_\_  
President of the Board of Education  
Fountain Valley School District

The Clerk of the Fountain Valley School District Governing Board does hereby certify that the foregoing Resolution was introduced and adopted by the Board of Education at a regularly scheduled meeting thereof held on this date, by the foregoing vote.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the Fountain Valley School District on this date.

\_\_\_\_\_  
Clerk of the Board of Education  
Fountain Valley School District

**EQUIPMENT LEASE/PURCHASE AGREEMENT  
(ACQUISITION FUND)  
(CALIFORNIA ABATEMENT)**

This Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of June 19, 2013, and entered into between Banc of America Public Capital Corp, a Kansas corporation (“*Lessor*”), and Fountain Valley School District, a body corporate and politic existing under the laws of the State of California (“*Lessee*”).

**WITNESSETH:**

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment (as such term is defined herein), subject to the terms and conditions hereof;

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

**ARTICLE I**

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$ 7, 954,198.90. The Acquisition Amount is the amount represented by Lessee to be sufficient, together with other funds of Lessee (if any) that are legally available for the purpose, to acquire and install the Equipment.

“*Acquisition Fund*” means the fund established and held by the Acquisition Fund Custodian pursuant to the Acquisition Fund Agreement, if any.

“*Acquisition Fund Agreement*” means the Acquisition Fund and Account Control Agreement in form and substance acceptable to and executed by Lessee, Lessor and the Acquisition Fund Custodian, pursuant to which an Acquisition Fund is established and administered.

“*Acquisition Fund Custodian*” means the Acquisition Fund Custodian identified in the Acquisition Fund Agreement, and its successors and assigns.

“*Acquisition Period*” means the period ending five (5) business days prior to June 19, 2014.

“*Agreement*” means this Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means the date when Lessee’s obligation to pay rent commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Acquisition Fund Custodian.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Equipment*” means the property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related costs such as freight, installation and taxes, capitalizable costs, and costs of issuance incurred in connection with the acquisition and/or financing of the Equipment.

“*Equipment Schedule*” means the equipment schedule attached hereto as Exhibit A and made a part hereof.

“*Event of Default*” means an Event of Default described in Section 12.01.

“*Lease Term*” shall begin on the Commencement Date and end on July 19, 2028.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to this Agreement, including the Equipment, the Rental Payments and other amounts due hereunder, pursuant to Section 11.01, or the Acquisition Fund, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform hereunder.

“*Material Adverse Change*” means any change in Lessee’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of Lessee, or (ii) Lessee’s ability to perform its obligations under this Agreement

“*Payment Schedule*” means the payment schedule attached hereto as Exhibit B and made a part hereof.

“*Prepayment Price*” means the amount that Lessee shall pay to Lessor to prepay the obligations hereunder as provided in the Payment Schedule.

“*Rental Payments*” means the basic rental payments payable by Lessee hereunder pursuant to Section 4.01, consisting of a principal component and an interest component.

“*State*” means the State of California.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Lessor.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer, installer or supplier with whom Lessor arranged Lessee’s acquisition, installation, maintenance and/or servicing of the Equipment.

“*Vendor Agreement*” means any contract entered into by Lessee and any Vendor for the acquisition, installation, maintenance and/or servicing of the Equipment.

## ARTICLE II

*Section 2.01. Representations and Covenants of Lessee.* Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof as follows:

(a) Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the constitution and laws of the State], with full power and authority to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement and the Acquisition Fund Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Acquisition Fund Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(e) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.

(f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee’s authority. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid hereunder.

(g) Lessee has kept, and throughout the Lease Term shall keep, its books and records in accordance with generally accepted accounting principles and practices consistently applied, and

shall deliver to Lessor (i) annual audited financial statements (including (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements) within 210 days of its fiscal year end, (ii) such other financial statements and information as Lessor may reasonably request, and (iii) upon Lessor's request, its annual budget for any prior or current fiscal year or the following fiscal year. The financial statements described in subsection (g) shall be accompanied by an unqualified opinion of Lessee's auditor. Credit information relating to Lessee may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(h) Lessee has an immediate need for the Equipment and expects to make immediate use of the Equipment. Lessee's need for the Equipment is not temporary and Lessee does not expect the need for any item of the Equipment to diminish during the Lease Term.

(i) The payment of the Rental Payments or any portion thereof is not directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than Lessee. Lessee has not entered into any management or other service contract with respect to the use and operation of the Equipment.

(j) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations under this Agreement or the Acquisition Fund Agreement. Lessee will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect Lessor's first priority security interest in the Equipment and the Acquisition Fund and Lessor's rights and benefits under this Agreement and the Acquisition Fund Agreement.

(k) Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.

(l) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Lessee has been a party at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

### ARTICLE III

*Section 3.01. Lease of Equipment.* Subject to the terms of this Agreement, Lessor agrees to provide the Acquisition Amount to acquire the Equipment. Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment.

*Section 3.02. Continuation of Lease Term.* Lessee intends, subject to Section 3.03, to continue the Lease Term and to pay the Rental Payments under the Lease. Lessee affirms that sufficient funds are available for its current fiscal year to pay any Rental Payments when due during the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term can be obtained from legally available funds of Lessee.

*Section 3.03. Abatement.* During any period in which, by reason of material damage or destruction or taking under the power of eminent domain (or sale to any entity threatening the use of such power) or material title defect with respect to any Equipment, there is substantial interference with the beneficial use and enjoyment by Lessee of such Equipment, the Rental Payments due under the Lease shall be abated in the same proportion (including in whole) that the portion of such Equipment that is unavailable for Lessee's beneficial use and enjoyment bears to all of the Equipment. Lessee shall immediately notify Lessor upon the occurrence of any event causing substantial interference with Lessee's beneficial use and enjoyment of any Equipment, and such notice shall be provided prior to the abatement of any Rental Payments under this Agreement. The amount of Rental Payments abated under this Agreement shall be such that the remaining Rental Payment obligation for each rental period represents fair consideration for the beneficial use and enjoyment of the portions of the Equipment that are not affected by such interference. Such abatement shall commence on the date that Lessee's beneficial use and enjoyment of the affected Equipment is restricted because of such interference and end on the earlier of (i) the date on which the beneficial use and enjoyment thereof are restored to Lessee, or (ii) the date on which Lessee either (x) replaces the affected Equipment, (y) uses the proceeds of insurance or condemnation award to pay the applicable Prepayment Price therefor or (z) uses legally available funds as provided in Section 7.03 to pay the applicable Prepayment Price therefor if no insurance proceeds or condemnation award are available for purposes of the foregoing clause (y); *provided, however*, that the provisions of this Agreement, including (but not limited to) dates on which Rental Payments are due, shall be extended for a period equal to the period the obligation to make Rental Payments was abated; and *provided further, however, to the extent authorized by law, that, in the event of damage to or destruction of all or a portion of the Equipment due to earthquake or other uninsured casualty for which the proceeds of rental interruption insurance are not available, the interest component of each Rental Payment shall accrue during such extended term at an interest rate, and be payable on each Rental Payment date during such extended term in* an amount determined by Lessor (whose determination shall be binding on Lessee absent manifest error) to maintain the tax-exempt yield that was in effect during the original Lease Term *so long as, and to the extent that, such increased amount does not cause the Rental Payments during such extended term to exceed the*

fair rental value of the Equipment. Notwithstanding any such interference with Lessee's beneficial use and enjoyment of a portion of the Equipment, this Agreement shall continue in full force and effect with respect to any remaining Equipment. Lessee hereby waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease by virtue of any interference with the use and possession of the Equipment.

*Section 3.04. Conditions to Lessor's Performance.*

(a) As a prerequisite to the performance by Lessor of any of its obligations under this Agreement, Lessee shall deliver to Lessor the following:

(i) An Acquisition Fund Agreement in the form set forth in Exhibit I hereto, satisfactory to Lessor and executed by Lessee and the Acquisition Fund Custodian;

(ii) A certified copy of a resolution, ordinance or other official action of Lessee's governing body, substantially in the form attached hereto as Exhibit C-1, authorizing the execution and delivery of this Agreement and the Acquisition Fund Agreement and performance by Lessee of its obligations under this Agreement and the Acquisition Fund Agreement;

(iii) A Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit C-2, completed to the satisfaction of Lessor;

(iv) An opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(v) Evidence of insurance as required by Section 7.02 hereof;

(vi) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time pursuant to Section 6.02;

(vii) A waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located;

(viii) If Lessee has designated this Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, a certificate substantially in the form attached hereto as Exhibit G executed by an authorized official of Lessee;

(ix) A copy of a fully completed and executed Form 8038-G;

(x) A certified copy of any Surety Bond satisfying the conditions set forth in Section 7.04, or, at Lessor's sole discretion, such Surety Bonds may be provided after the

Commencement Date, provided however, that no “Disbursement Request” pursuant to the Acquisition Fund Agreement shall be authorized by Lessor until such Surety Bonds satisfying the conditions set forth in Section 7.04 have been delivered to Lessor; and

(xi) Such other items reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations under this Agreement and the Acquisition Fund Agreement shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement, and (ii) no Event of Default having occurred and continuing.

(c) Subject to satisfaction of the foregoing, Lessor will deposit the Acquisition Amount with the Acquisition Fund Custodian.

#### ARTICLE IV

*Section 4.01. Rental Payments.* Subject to Section 3.03, Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Payment Schedule. Interest on the Acquisition Amount shall begin to accrue as of the Commencement Date. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less, from such date.

*Section 4.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal as more fully detailed on the Payment Schedule.

*Section 4.03. Rental Payments to Constitute a Current Expense of Lessee.* Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments shall constitute a current expense of Lessee payable solely from its general fund or other funds that are legally available for that purpose and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

*Section 4.04. Rental Payments to be Unconditional.* Except as provided in Section 3.03, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Vendor of any Equipment or Lessor, failure of the Vendor under any Vendor Agreement to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under any Vendor Agreement, or any accident, condemnation or unforeseen circumstances.

*Section 4.05. Tax Covenants.*

(a) Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(b) In the event that Lessee does not spend sufficient moneys in the Acquisition Fund within six (6) months after the date the deposit is made pursuant to Section 3.04(c), Lessee will, if required by Section 148(f) of the Code to pay rebate: (i) establish a Rebate Account and deposit the Rebate Amount (as defined in Section 1.148-3(b) of the Federal Income Tax Regulations) not less frequently than once per year after the Commencement Date; and (ii) rebate to the United States, not less frequently than once every five (5) years after the Commencement Date, an amount equal to at least 90% of the Rebate Amount and within 60 days after payment of all Rental Payments or the Prepayment Price as provided in Section 10.01(a) hereof, 100% of the Rebate Amount, as required by the Code and any regulations promulgated thereunder. Lessee shall determine the Rebate Amount, if any, at least every year and upon payment of all Rental Payments or the Prepayment Price and shall maintain such determination, together with any supporting documentation required to calculate the Rebate Amount, until six (6) years after the date of the final payment of the Rental Payments or the Prepayment Price.

*Section 4.06. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee’s action or failure to take any action.

*Section 4.07. Mandatory Prepayment.* Any funds not applied to Equipment Costs and remaining in the Acquisition Fund on the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate (in the form attached hereto as Exhibit E), shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing hereunder in the inverse order of Rental Payment dates.

*Section 4.08. Covenant to Budget and Appropriate.* Lessee hereby covenants to take such action as is necessary under the laws applicable to Lessee (including with respect to

supplemental appropriations) to budget for and include and maintain funds sufficient and available to discharge its obligation to meet all Rental Payments in each of its fiscal years during the Lease Term. The foregoing covenant is not intended, and shall not be construed, to obligate Lessee to pay, or to budget for and include and maintain funds to pay, Rental Payments that it is not obligated to pay to the extent provided in Section 3.03.

The covenants on the part of Lessee herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of Lessee to take such action and do such things as are required by law in the performance of the official duty of such officials to enable Lessee to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by Lessee.

## ARTICLE V

### *Section 5.01. Delivery, Installation and Acceptance of Equipment.*

(a) Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment has been delivered and installed, Lessee shall promptly accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit E.

(b) Lessee shall deliver to Lessor original invoices (and proof of payment of such invoices) and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by Lessee.

*Section 5.02. Quiet Enjoyment of Equipment.* So long as Lessee is not in default hereunder, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

*Section 5.03. Location; Inspection.* Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

*Section 5.04. Use and Maintenance of the Equipment.* Lessee shall not install, use, operate, or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body; *provided* that Lessee may contest in good faith the validity or application of any

such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights hereunder.

Lessee agrees that it will maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

Lessee shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

## ARTICLE VI

*Section 6.01. Title to the Equipment.* During the Lease Term, and so long as Lessee is not in default under Article XII hereof, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of this Agreement. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors, and keep all Equipment free and clear of all such claims, liens and processes. Upon payment of all amounts due and owing under this Agreement in accordance with Section 10.01 (including upon payment of all Rental Payments and other amounts payable under this Agreement), Lessor shall release its security interest in and to the Equipment under the Agreement, as is and where is, without warranty of any kind other than as to the absence of liens created by or through Lessor, and shall execute and deliver to Lessee such documents as Lessee may reasonably request to evidence the release of Lessor's security interest in the Equipment subject to this Agreement.

*Section 6.02. Security Interest.* As additional security for the payment and performance of all of Lessee's obligations hereunder, Lessee hereby grants to Lessor a first priority security interest constituting a first lien on (a) the Equipment, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Acquisition Fund and the proceeds thereof, including such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as Lessee.

*Section 6.03. Personal Property, No Encumbrances.* Lessee agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a

part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; provided, that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

## ARTICLE VII

*Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges.* Lessee shall keep the Equipment free of all levies, liens, and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the Lease Term. During the Lease Term, Lessor will not claim ownership of the Equipment for the purposes of any tax credits, benefits or deductions with respect to the Equipment.

*Section 7.02. Insurance.* Lessee shall during the Lease Term maintain or cause to be maintained (a) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Lessor and its assigns as additional insured that protects Lessor from liability with limits of at least \$ 1,000,000 per occurrence/\$3,000,000 in the aggregate for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount satisfactory to Lessor; (c) worker's compensation coverage as required by the laws of the State and (d) rental interruption insurance naming Lessor as loss payee, with coverage equal to the maximum total Rental Payments payable by Lessee under the Lease for any consecutive 24-month period and insuring against abatement of Rental Payments payable by Lessee resulting from Lessee's loss of beneficial use or enjoyment of the Equipment or any substantial portion thereof and caused by any and all other perils either insured or uninsured; *provided* that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and/or (b). In the event Lessee is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall provide to Lessor a self-insurance letter in substantially the form attached hereto as Exhibit F. Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term.

Lessee shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

*Section 7.03. Risk of Loss.* Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement, except as otherwise provided in Section 3.03. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into of this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with this Agreement or any material misrepresentation provided by Lessee under or in connection with this Agreement. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

*Section 7.04. Surety Bonds; Lessee to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* Lessee shall secure from each Vendor directly employed by Lessee in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lessor and naming Lessor as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. Lessee shall cause the surety company to add Lessor as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Lessor promptly upon receipt thereof by Lessee. Any proceeds from a Surety Bond shall be applied first to amounts due Lessor under this Agreement, and any remaining amounts shall be payable to Lessee.

In the event of a material default of any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, Lessee will promptly proceed to exhaust its remedies against the Vendor in default. Lessee shall

advise Lessor of the steps it intends to take in connection with any such default. Any amounts received by Lessee in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to Lessor and applied against Lessee's obligations hereunder.

*Section 7.05. Advances.* In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at a rate equal to the Contract Rate plus 5% per annum or the maximum amount permitted by law, whichever is less.

## **ARTICLE VIII**

*Section 8.01. Damage, Destruction and Condemnation.* If, prior to the termination of the Lease Term, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment and any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee or (ii) Lessee shall exercise its option to prepay the obligations hereunder in accordance with Section 10.01(b).

If Lessee elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor a first priority security interest in any such Replacement Equipment. Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through Lessor, and shall provide to Lessor any and all documents as Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Agreement. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged equipment in accordance with Section 10.01(b).

For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 8.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 8.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Prepayment Price for the Equipment, and, upon such payment, the Lease Term shall terminate and Lessor’s security interest in the Equipment shall terminate as provided in Section 6.01 hereof. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing such Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## **ARTICLE IX**

*Section 9.01. Disclaimer of Warranties.* Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee’s acquisition of the Equipment shall be on an “as is” basis. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Equipment or the existence, furnishing, functioning or Lessee’s use of any item, product or service provided for in this Agreement.

*Section 9.02 Vendor’s Agreements; Warranties.* Lessee covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Lessor. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default under this Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. Lessee’s sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor hereunder, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

## ARTICLE X

*Section 10.01. Prepayment Option.* Lessee shall have the option to prepay or satisfy all its obligation hereunder, at the following times and upon the following terms:

(a) From and after the date specified (if any) in the Payment Schedule (the “*Prepayment Option Commencement Date*”), on the Rental Payment dates specified in the Payment Schedule, upon not less than 30 days’ prior written notice, and upon payment in full of the Rental Payments then due and all other amounts then owing under this Agreement plus the then applicable Prepayment Price, which may include a prepayment premium on the unpaid balance as set forth in the Payment Schedule; or

(b) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in Lessee’s notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment date or 60 days after the casualty event) upon payment in full to Lessor of the Rental Payment then due plus the then applicable Prepayment Price (or, in the event such prepayment occurs on a date other than a Rental Payment date, the sum of (i) the Prepayment Price set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such prepayment plus (ii) accrued interest on the Outstanding Balance set forth on the Payment Schedule relating to the Rental Payment immediately prior to the date of such prepayment, plus all other amounts then owing hereunder; or

(c) Upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing hereunder to Lessor.

After payment of the applicable Prepayment Price and all other amounts owing hereunder, Lessor’s security interests in and to such Equipment will be terminated and Lessee will own the Equipment free and clear of Lessor’s security interest in the Equipment.

## ARTICLE XI

*Section 11.01. Assignment by Lessor.*

(a) Lessor’s right, title and interest in and to this Agreement, the Rental Payments and any other amounts payable by Lessee hereunder, the Acquisition Fund Agreement, its security interest in the Equipment and Acquisition Fund, and all proceeds therefrom may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor, without the necessity of obtaining the consent of Lessee; *provided*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Section 11.01 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust; *provided* such certificates are sold only on a private placement basis (and not pursuant to any “public offering”) to a purchaser(s) who

represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, (ii) such purchaser understands that neither this Agreement nor certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933; *provided further*, that in any event, Lessee shall not be required to make Rental Payments, to send notices or to otherwise deal with respect to matters arising under this Agreement with or to more than one individual or entity.

(b) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section 11.01 shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under this Agreement, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During the Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or the Vendor. Assignments in part may include without limitation assignment of all of Lessor’s security interest in and to the Equipment and all rights in, to and under this Agreement related to such Equipment, and all of Lessor’s security interest in and to the Acquisition Fund, or all rights in, to and under the Acquisition Fund Agreement.

(c) If Lessor notifies Lessee of its intent to assign this Agreement, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit H attached hereto within five (5) business days after its receipt of such request.

*Section 11.02. Assignment and Subleasing by Lessee.* **None of Lessee’s right, title, and interest in, to and under this Agreement or any portion of the Equipment or the Acquisition Fund Agreement or the Acquisition Fund may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor’s prior written consent shall be null and void.**

## ARTICLE XII

*Section 12.01. Events of Default Defined.* Any of the following events shall constitute an “Event of Default” under this Agreement:

(a) Failure by Lessee to (i) pay any Rental Payment or other payment required to be paid under this Agreement within 10 days after the date when due as specified herein or (ii) maintain insurance as required herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which Lessee is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Lessor or any affiliate of Lessor, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregate amount in excess of \$100,000.00;

(e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, moratorium or insolvency proceeding; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may without terminating this Agreement, take whatever action at law or in equity may appear necessary or desirable to collect each Rental Payment payable by Lessee and other amounts payable by Lessee hereunder as they become due and payable;

(b) With or without terminating the Lease Term, Lessor may enter the premises where the Equipment is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or,

for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from legally available funds, for the difference between (i) the Rental Payments payable by Lessee and other amounts hereunder or the Equipment that are payable by Lessee to the end of the Lease Term, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies hereunder , including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03; *provided*, that in no event shall Lessee be liable in any fiscal year for any amount in excess of the Rental Payments shown for such year in the Payment Schedule. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities hereunder or the Equipment;

(c) Lessor may terminate the Acquisition Fund Agreement and apply any proceeds in the Acquisition Fund to the Rental Payments due hereunder;

(d) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement or the Acquisition Fund Agreement or as a secured party in any or all of the Equipment or the Acquisition Fund; and

(e) By action pursuant to the California Code of Civil Procedure, or as otherwise provided by law, obtain the issuance of a writ of mandamus enforcing, for each fiscal year *seriatim* during the entire balance of the remaining Lease Term, subject to Section 3.03, the duty of Lessee to appropriate and take all other administrative steps necessary for the payment of Rental Payments and other amounts due hereunder.

*Section 12.03. No Remedy Exclusive; No Acceleration.* No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity; *provided* that Lessor shall have no right to accelerate any Rental Payment or otherwise declare any Rental Payment or other amount payable not then in default to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

### **ARTICLE XIII**

*Section 13.01. Notices.* All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or delivered by overnight courier, or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

*Section 13.02. Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

*Section 13.03. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 13.04. Amendments, Changes and Modifications.* This Agreement may only be amended by Lessor and Lessee in writing.

*Section 13.05. Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 13.06. Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State.

*Section 13.07. Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:  
Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-032-07-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 556-6977

LESSEE:  
Fountain Valley School District  
10055 Slater Avenue  
Fountain Valley, CA 92708  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

Attest:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

List of Exhibits

- Exhibit A -- Equipment Schedule
- Exhibit B -- Payment Schedule
- Exhibit C-1 -- Form of Authorizing Resolution
- Exhibit C-2 -- Form of Incumbency and Authorization Certificate
- Exhibit D -- Form of Opinion of Counsel Form
- Exhibit E -- Form of Acceptance Certificate
- Exhibit F -- Form of Self-Insurance Certificate
- Exhibit G -- Intentionally Omitted
- Exhibit H -- Form of Notice and Acknowledgement of Assignment
- Exhibit I -- Form of Acquisition Fund and Account Control Agreement

## **EXHIBIT A**

### **EQUIPMENT SCHEDULE**

#### Location of Equipment:

Roch Courreges Elementary School  
18313 Santa Carlotta Avenue  
Fountain Valley, CA 92708

James H. Cox Elementary School  
17615 Los Jardines East  
Fountain Valley, CA 92708

Harry C. Fulton Middle School  
8787 El Lago Street  
Fountain Valley, CA 92708

Robert Gisler Elementary School  
18720 Las Flores Street  
Fountain Valley, CA 92708

Kazuo Masuda Middle School  
17415 Los Jardines West  
Fountain Valley, CA 92708

William T. Newland Elementary School  
8787 Dolphin Drive  
Fountain Valley, CA 92708

Isojiro Oka Elementary School  
9800 Yorktown Avenue  
Fountain Valley, CA 92708

Urbain H. Plavan Elementary School  
9675 Warner Avenue  
Fountain Valley, CA 92708

Samuel E. Talbert Middle School  
9101 Brabham Drive  
Fountain Valley, CA 92708  
Hisamatsu Tamura Elementary School

17340 Santa Suzanne  
Fountain Valley, CA 92708

Fountain Valley School District: District Office  
10055 Slater Avenue  
Fountain Valley, CA 92708

Fountain Valley School District: Maintenance & Operations  
17330 Mount Hermann Street  
Fountain Valley, CA 92708

Equipment Description (Scope of Work):

As detailed in the Energy Services Contract dated \_\_\_\_\_, 2013 between Chevron Energy Solutions Company, a Division of Chevron U.S.A. Inc. and Fountain Valley School District, the scope of work is limited to Solar Photovoltaic Systems, Lighting Upgrades, Portable AC Units, Rooftop AC Units, Programmable Thermostats and the installation of Daylighting Technology.

**EXHIBIT B**

**PAYMENT SCHEDULE**

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Outstanding Balance	Prepayment Price  (including prepayment premium, if applicable)
7/19/14	\$ 977,417.96	\$ 249,894.42	\$ 727,523.54	\$7,226,675.36	\$7,371,208.87
7/19/15	\$ 823,620.14	\$ 209,573.59	\$ 614,046.55	\$6,612,628.81	\$6,744,881.39
7/19/16	\$ 835,730.34	\$ 191,766.24	\$ 643,964.11	\$5,968,664.70	\$6,088,037.99
7/19/17	\$ 889,443.54	\$ 173,091.28	\$ 716,352.26	\$5,252,312.44	\$5,357,358.69
7/19/18	\$ 904,582.26	\$ 152,317.06	\$ 752,265.20	\$4,500,047.23	\$4,590,048.18
7/19/19	\$ 411,446.91	\$ 130,501.37	\$ 280,945.54	\$4,219,101.69	\$4,303,483.73
7/19/20	\$ 430,654.37	\$ 122,353.95	\$ 308,300.43	\$3,910,801.27	\$3,989,017.29
7/19/21	\$ 450,746.66	\$ 113,413.24	\$ 337,333.43	\$3,573,467.84	\$3,644,937.20
7/19/22	\$ 471,763.21	\$ 103,630.57	\$ 368,132.64	\$3,205,335.20	\$3,269,441.90
7/19/23	\$ 493,747.14	\$ 92,954.72	\$ 400,792.42	\$2,804,542.78	\$2,860,633.64
7/19/24	\$ 558,654.56	\$ 81,331.74	\$ 477,322.82	\$2,327,219.97	\$2,373,764.36
7/19/25	\$ 584,228.11	\$ 67,489.38	\$ 516,738.73	\$1,810,481.24	\$1,846,690.86
7/19/26	\$ 610,973.99	\$ 52,503.96	\$ 558,470.04	\$1,252,011.20	\$1,277,051.42
7/19/27	\$ 638,947.45	\$ 36,308.32	\$ 602,639.13	\$649,372.07	\$662,359.51
7/19/28	\$ 668,203.86	\$ 18,831.79	\$ 649,372.07	\$0.00	\$0.00
	<b>\$9,750,160.50</b>	<b>\$1,795,961.60</b>	<b>\$7,954,198.90</b>		

*Contract Rate.* The Contract Rate is 2.90% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 10.01 of the Agreement, the Prepayment Option Commencement Date is July 19, 2014.

LESSOR:  
Banc of America Public Capital Corp

LESSEE:  
Fountain Valley School District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT C-1

### FORM OF AUTHORIZING RESOLUTION

A RESOLUTION OF THE GOVERNING BODY OF [\_\_\_\_],  
AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT  
LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION,  
PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR  
THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY  
OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND  
AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO  
THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY  
THIS RESOLUTION.

WHEREAS, [\_\_\_\_] (the “*Lessee*”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of \_\_\_\_\_, is authorized by the laws of the State of \_\_\_\_\_ to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment with a cost not to exceed \$ \_\_\_\_\_ constituting personal property necessary for the Lessee to perform essential governmental functions (the “*Equipment*”); and

WHEREAS, in order to acquire such equipment, the Lessee proposes to enter into that certain Equipment Lease/Purchase Agreement (the “*Agreement*”) with Banc of America Public Capital Corp (or one of its affiliates)(the “*Lessor*”), the form of which has been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the governing body of the Lessee deems it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Agreement and the documentation relate to the financing of the Equipment for the purchase, acquisition and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the governing body of Lessee as follows:

*Section 1. Approval of Documents.* The form, terms and provisions of the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the \_\_\_\_\_ of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to execute, and the \_\_\_\_\_ of the Lessee is hereby authorized and directed to attest and countersign, the Agreement and any

related Exhibits attached thereto and to deliver the Agreement (including such Exhibits) to the respective parties thereto, and the \_\_\_\_\_ of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

*Section 2. Other Actions Authorized.* The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

*Section 3. No General Liability.* Nothing contained in this Resolution, the Agreement nor any other instrument shall be construed with respect to the Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Lessee or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Agreement are special limited obligations of the Lessee as provided in the Agreement.

*Section 4. Appointment of Authorized Lessee Representatives.* The \_\_\_\_\_ and \_\_\_\_\_ of the Lessee are each hereby designated to act as authorized representatives of the Lessee for purposes of the Agreement until such time as the governing body of the Lessee shall designate any other or different authorized representative for purposes of the Agreement.

*Section 5. Designation for Purposes of Section 265(b)(3) of the Internal Revenue Code of 1986.* The governing body of the Lessee hereby designates the Agreement as a “qualified tax-exempt obligation” for purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

*Section 6. Severability.* If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

*Section 7. Repealer.* All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

*Section 8. Effective Date.* This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the governing body of the Lessee this \_\_\_\_\_ day of \_\_\_\_\_.

[\_\_\_\_\_] ,  
as lessee

[SEAL]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Printed: Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, a duly elected or appointed and acting \_\_\_\_\_  
[Secretary] [City Clerk] [County Clerk] of Fountain Valley School District (“*Lessee*”) certifies  
as follows:

A. The following listed persons are duly elected or appointed and acting officials of Lessee (the “*Officials*”) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Equipment Lease/Purchase Agreement dated as of June 19, 2013 by and between Lessee and Banc of America Public Capital Corp (“*Lessor*”), the Acquisition Fund and Account Control Agreement dated as of June 19, 2013 among Lessor, Lessee and Deutsche Bank Trust Company Americas, as Acquisition Fund Custodian, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are each the binding and authorized agreements of Lessee, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

**EXHIBIT D**

**FORM OF OPINION OF COUNSEL TO LESSEE**  
(to be typed on letterhead of counsel)

[Closing Date]

Banc of America Public Capital Corp

11333 McCormick Road  
Mail Code: MD5-032-07-05

Hunt Valley, MD 21031

Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
between Banc of America Public Capital Corp, as Lessor, and  
\_\_\_\_\_, as Lessee

Ladies and Gentlemen:

As legal counsel to \_\_\_\_\_ ("*Lessee*"), I have examined (a) an executed counterpart of a certain Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_, and Exhibits thereto by and between Banc of America Public Capital Corp ("*Lessor*") and Lessee (the "*Agreement*"), which, among other things, provides for the lease of certain property (the "*Equipment*") and a certain Acquisition Fund and Account Control Agreement among Lessor, Lessee, and \_\_\_\_\_ as Acquisition Fund Custodian, dated \_\_\_\_\_ (the "*Acquisition Fund Agreement*"), (b) an executed counterpart of the ordinances or resolutions of Lessee which with respect to the transaction contemplated by the Agreement, the Acquisition Fund Agreement, and documents related thereto and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Agreement, the Acquisition Fund Agreement and the documents relating thereto are referred to collectively as the "Transaction Documents."

Based on the foregoing, I am of the following opinions:

1. Lessee is a body corporate and politic, duly organized and existing under the laws of the State, and [has a substantial amount of the following sovereign powers: (a) the power

to tax, (b) the power of eminent domain, and (c) police power][is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code].

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms.

4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment, the Acquisition Fund or other collateral thereunder.

6. The portion of rental payments designated as and constituting interest paid by Lessee and received by Lessor is excluded from Lessor's gross income for federal income tax purposes under Section 103 of the Code and is exempt from State of \_\_\_\_\_ personal income taxes; and such interest is not a specific item of tax preference or other collateral for purposes of the federal individual or corporate alternative minimum taxes.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Sincerely,

**EXHIBIT E**

**FORM OF ACCEPTANCE CERTIFICATE**

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of June 19, 2013,  
between Banc of America Public Capital Corp, as Lessor, and Fountain  
Valley School District, as Lessee

Ladies and Gentlemen:

In accordance with the Equipment Lease/Purchase Agreement (the "*Agreement*"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment (as such term is defined in the Agreement) has been delivered, installed and accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement are true and correct as of the date hereof.
5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

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

LESSEE:

Fountain Valley School District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal)

**EXHIBIT F**

**FORM OF SELF INSURANCE CERTIFICATE**

Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05  
Hunt Valley, MD 21031  
Attn: Contract Administration

Re: Equipment Lease/Purchase Agreement, dated as of \_\_\_\_\_,  
(the "Agreement") between Banc of America Public Capital Corp, as  
Lessor, and \_\_\_\_\_, as Lessee

In connection with the above-referenced Agreement,  
\_\_\_\_\_ (the "Lessee"), the Lessee warrants and represents  
to Banc of America Public Capital Corp the following information. The terms capitalized  
herein but not defined herein shall have the meanings assigned to them in the  
Agreement.

1. The Lessee is self-insured for damage or destruction to the Equipment.  
The dollar amount limit for property damage to the Equipment under such self-insurance  
program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy  
for claims in excess of Lessee's self-insurance limits for property damage to the  
Equipment which policy has a dollar limit for property damage to the Equipment under  
such policy of \$\_\_\_\_\_.]

2. The Lessee is self-insured for liability for injury or death of any person or  
damage or loss of property arising out of or relating to the condition or operation of the  
Equipment. The dollar limit for such liability claims under the Lessee's self-insurance  
program is \$\_\_\_\_\_. [The Lessee maintains an umbrella insurance policy  
for claims in excess of Lessee's self-insurance limits for liability which policy has a dollar  
limit for liabilities for injury and death to persons as well as damage or loss of property  
arising out of or relating to the condition or operation of the Equipment in the amount of  
\$\_\_\_\_\_.]

[3]. The Lessee maintains a self-insurance fund. Monies in the self-insurance  
fund [are/are not] subject to annual appropriation. The total amount maintained in the  
self-insurance fund to cover Lessee's self-insurance liabilities is \$\_\_\_\_\_.  
[Amounts paid from the Lessee's self-insurance fund are subject to a dollar per claim of  
\$\_\_\_\_\_.]

[3]. The Lessee does not maintain a self-insurance fund. The Lessee obtains  
funds to pay claims for which it has self-insured from the following sources:  
\_\_\_\_\_. Amounts payable for claims from the such  
sources are limited as follows: \_\_\_\_\_

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by Lessee.

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**INTENTIONALLY OMITTED**

**EXHIBIT H**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

**DATED** \_\_\_\_\_

BANC OF AMERICA PUBLIC CAPITAL CORP (“*Assignor*”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“*Assignee*”) all of Assignor’s right, title and interest in, to and under the Equipment Lease/Purchase Agreement (the “*Agreement*”) dated as of \_\_\_\_\_, between Assignor and \_\_\_\_\_ (“*Lessee*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due under the Agreement, all of Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of Assignor’s right, title and interest in, to and under the Acquisition Fund and Account Control Agreement dated \_\_\_\_\_ (the “*Acquisition Fund Agreement*”) by and among Lessee, Assignor and \_\_\_\_\_, as Acquisition Fund Custodian, together with the Acquisition Fund related thereto (collectively, the Assigned Property”).

1. Pursuant to the authority of Resolution \_\_\_\_\_ adopted on \_\_\_\_\_, Lessee hereby [consents to and] acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. Lessee hereby agrees that: (i) Assignee shall have all the rights of Lessor under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all remedies thereunder; and (ii) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$ _____
Total Amount of Rents Remaining	–	\$ _____
Frequency of Rental Payments	–	_____
Next Rental Payment Due	–	_____
Funds Remaining in Acquisition Fund	–	\$ _____

4. The Agreement remains in full force and effect, has not been amended and no Event of Default (or event which with the passage of time or the giving of notice or both would constitute a default) has occurred thereunder.

5. Any inquiries of Lessee related to the Agreement and any requests for disbursements from the Acquisition Fund, if applicable, and all Rental Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

LESSEE: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT I

### Form of Acquisition Fund and Account Control Agreement

This Acquisition Fund and Account Control Agreement (this “Agreement”), dated as of June 19, 2013, by and among Banc of America Public Capital Corp (hereinafter referred to as “Lessor”), Fountain Valley School District, a political subdivision of the state of California (hereinafter referred to as “Lessee”) and Deutsche Bank Trust Company Americas, a New York Banking Corporation (hereinafter referred to as “Acquisition Fund Custodian”).

Reference is made to that certain Equipment Lease/Purchase Agreement dated as of June 19, 2013 between Lessor and Lessee (hereinafter referred to as the “Lease”), covering the acquisition and lease of certain Equipment described therein (the “Equipment”). It is a requirement of the Lease that the Acquisition Amount (\$7,954,198.90) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the “Fountain Valley School District Acquisition Fund” (the “Acquisition Fund”) to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor and Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from Lessee. Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lessor shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Lessee agrees to and does hereby release the Acquisition Fund Custodian and Lessor from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this agreement, “Qualified Investments” means any investments which meet the requirements of California Government Code Sections 53600 *et seq.*

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lessor, as is more fully described in Section 2 hereof. If the

amounts in the Acquisition Fund are insufficient to pay such amounts, Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund on or after the earlier of (i) the expiration of the Acquisition Period and (ii) the date on which Lessee executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of a default under the Lease.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Lessee agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, does to the extent permitted by law and from funds legally available for such purpose indemnify the Acquisition Fund Custodian against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Lessee and Lessor shall be in disagreement about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by Lessee for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Lease until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund and the

performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor and Lessee concerning the Acquisition Fund.

2. Acquisition of Property.

(a) Acquisition Contracts. Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Acquisition Fund. Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lessor makes no warranty or representation with respect thereto. Lessor shall have no liability under any of the acquisition or construction contracts. Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of an executed Disbursement Request in the form attached hereto as Schedule 1 certifying that:

(i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof); (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee); (iv) the Equipment is insured in accordance with the Lease; (v) no Event of Default (nor any event which, with notice or laps of time or both, would become an Event of Default) has occurred and is continuing and (vi) the representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

2. Delivery to Lessor invoices (and proofs of payment of such invoices, if Lessee seeks reimbursement) and bills of sale (if title to such Equipment has passed to Lessee) therefor as required by Section 3.04 of the Lease and any additional documentation reasonably requested by Lessor; and
3. The disbursement shall occur during the Acquisition Period.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Lease, Lessor will cause the Acquisition Amount to be deposited in the Acquisition Fund. Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund. Any funds remaining in the Acquisition Fund on or after the earlier of (a) the expiration of the Acquisition Period and (b) the date on which Lessee executes an Acceptance Certificate, or upon a termination of the Acquisition Fund as otherwise provided herein, shall be applied by the Acquisition Fund Custodian to amounts owed under the Lease in accordance with Section 4.07 of the Lease.

5. Security Interest. The Acquisition Fund Custodian and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "*Collateral*"), Lessor, Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of California (the "*Commercial Code*") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Lessee is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of

levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee.

(d) Without the prior written consent of Lessor, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform

Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 7 below, concurrently with the sending thereof to Lessee, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to Lessee with respect to the Acquisition Fund.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Custodian such information as it may request, from time to time, in order for the Custodian to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:                      Banc of America Public Capital Corp  
   11333 McCormick Road  
   Mail Code: MD5-032-07-05  
   Hunt Valley, MD 21031  
   Attn: Contract Administration  
   Fax: (443) 556-6977

If to Lessee:                        Fountain Valley School District  
   10055 Slater Avenue  
   Fountain Valley, CA 92708  
   Attn: \_\_\_\_\_  
   Fax: \_\_\_\_\_

If to Acquisition

Fund Custodian: Deutsche Bank Trust Company Americas  
60 Wall Street, 27<sup>th</sup> Floor  
New York, NY 10005  
Attn: Lisa McDermid  
Phone: 212-250-6674  
Fax: 917-472-1575

In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

Banc of America Public Capital Corp  
as Lessor

Fountain Valley School District  
as Lessee

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Deutsche Bank Trust Company Americas  
As Acquisition Fund Custodian

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1**  
**to the Acquisition Fund and Account Control Agreement**  
**FORM OF DISBURSEMENT REQUEST**

Re: Equipment Lease/Purchase Agreement dated as of June 19, 2013 by and between Banc of America Public Capital Corp, as Lessor and Fountain Valley School District, as Lessee (the "Lease") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.)

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of June 19, 2013 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lessor"), Fountain Valley School District ("Lessee") and Deutsche Bank Trust Company Americas, (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement for the following purposes:

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid (or has been paid by Lessee and Lessee requests reimbursement thereof), and the Equipment relating to such obligation has been delivered, installed and accepted by Lessee. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Lessee).

(iv) The Equipment is insured in accordance with the Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period.

(vii) The representations, warranties and covenants of Lessee set forth in the Lease are true and correct as of the date hereof.

Dated: \_\_\_\_\_

FOUNTAIN VALLEY SCHOOL DISTRICT

By: \_\_\_\_\_

Authorized Representative

Disbursement of funds from the Acquisition Fund in accordance with the foregoing Disbursement Request hereby is authorized

BANC OF AMERICA PUBLIC CAPITAL CORP

as Lessor under the Lease

By: \_\_\_\_\_

Name:

Title:



**ENERGY SERVICES CONTRACT**

**DRAFT DATED 6 June 2013**

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of ● June 2013 (the "Contract Effective Date"), by and between **Chevron Energy Solutions Company, a Division of Chevron U.S.A. Inc.**, a Pennsylvania corporation ("Chevron Energy Solutions"), and **Fountain Valley School District**, located at 10055 Slater Avenue, Fountain Valley, CA 92708 ("Fountain Valley SD") and together with Chevron Energy Solutions the "Parties" and each of Fountain Valley SD and Chevron Energy Solutions a "Party").

**CONTRACT RECITALS**

WHEREAS, Fountain Valley SD owns and/or operates certain public facilities specifically described in Attachment C (the "Facilities") and Fountain Valley SD wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability; and

WHEREAS, Chevron Energy Solutions is a full-service energy services company with the technical capabilities to provide services to Fountain Valley SD including, but not limited to, identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, Fountain Valley SD executed a Program Development Agreement with Chevron Energy Solutions to perform an integrated energy assessment and present Fountain Valley SD with a report (the "Report") and a recommended energy plan to implement certain ECMs; and

WHEREAS, in the Report, Chevron Energy Solutions identified potential energy and operational savings opportunities at Fountain Valley SD's Facilities and estimated program costs to implement the recommended ECMs and presented an overall potential energy cost and consumption savings for implementing the ECM recommendations; and

WHEREAS, on January 31, 2013, Chevron Energy Solutions delivered the Report, on an arms' length basis, to personnel of Fountain Valley SD for determination of the desired scope of work; and

WHEREAS, the Board of Trustees of the Fountain Valley School District, by adoption of Resolution No. 2013-20 at its meeting of 16 April 2013, (i) found that (1) it is in the best interest of the Fountain Valley School District to enter into an energy service contract with Chevron Energy Solutions Company for the implementation of certain energy related improvements to Fountain Valley School District facilities, and (2) the anticipated cost to the Fountain Valley School District for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated cost to the Fountain Valley School District of thermal, electrical, or other energy that would have been consumed by the Fountain Valley School District in the absence of those purchases, and (ii) authorized the Fountain Valley School District to execute the energy service contract by and between the Fountain Valley School District and Chevron Energy Solutions Company for the implementation of certain energy related improvements to Fountain Valley School District facilities.

NOW, THEREFORE, Fountain Valley SD and Chevron Energy Solutions hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

For purposes of this Contract and its Attachments, the defined terms herein will have the meaning set forth as follows:

"**AAA**" is defined in Section 23.01.

"**Abnormally Severe Weather Conditions**" means typhoons, hurricanes, tornadoes, lightning storms, when designated as such by the National Oceanic and Atmospheric Administration, and other climatic and weather conditions that are of substantially the same abnormal severity and have a detrimental impact on the ability of Chevron Energy Solutions to perform the Work or the Professional Services, for the period of time when, and the

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area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work or Professional Services are then being performed. For the avoidance of doubt, the term “Abnormally Severe Weather Conditions” specifically includes rain, snow or sleet accumulation over a forty-eight (48) hour period in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period over a forty-eight (48) hour period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Act**” is defined in ARTICLE 16.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by Chevron Energy Solutions using actual utility billing information supplied by Fountain Valley SD for that Measurement Period.

“**Affiliate**” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and ownership of fifty percent (50%) or more of the voting securities of another Person will create a rebuttable presumption that such Person controls such other Person.

“**Annual Envision Fee**” means a fee payable annually in advance by Fountain Valley SD to Chevron Energy Solutions, in consideration of the performance of up to four (4) years of Envision Services. The Annual Envision Fee for the first Measurement Period will be \$38,304. The Annual Envision Fee will be increased annually thereafter at the rate of four percent (4%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

“**Annual M&V Fee**” means a fee payable annually in advance by Fountain Valley SD to Chevron Energy Solutions, in consideration of the provision of up to five (5) years of the Savings Guarantee, the Energy Savings Reports and the related measurement and verification services. The Annual M&V Fee for the first Measurement Period will be \$14,538. The Annual M&V Fee will be increased annually thereafter at the rate of four percent (4%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

“**Annual Maintenance Fee**” means a fee payable annually in advance by Fountain Valley SD to Chevron Energy Solutions, in consideration of the performance of up to ten (10) years of PM Services. The Annual Maintenance Fee for the first Measurement Period will be \$46,965. The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum, each increase to be effective on the first day of the corresponding Measurement Period.

“**Applicable Law**” means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be applicable and in effect at the time the Work or the Professional Services are undertaken.

“**Applicable Permits**” means all permits, waivers, authorizations, or licenses issued or required to be issued by any Governmental Authority with jurisdiction and authority in connection with the Work or Professional Services.

“**ARRA**” is defined in ARTICLE 15.

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment) requested or initiated by Fountain Valley SD.

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

Attachment #	Attachment Title
Attachment A	Form of Performance Bond
Attachment B	Form of Payment Bond
Attachment C	Fountain Valley SD's Facilities & Existing Equipment
Attachment D	Scope of Work
Attachment E	Scope of Envision Services
Attachment F	Allocation of Contract Amount
Attachment G	Standards of Occupancy and Control
Attachment H	Energy Savings Measurement & Verification Plan

Attachment #	Attachment Title
Attachment I	List of Incentives
Attachment J	Monitoring Installation Scope of Work
Attachment K	Preventive Maintenance Services
Attachment L	Student Safety Certification
Attachment M	California Labor Code Sections

**“Base Energy Rate”** means the dollars per energy unit for each building and/or each ECM, set forth in the Savings Measurement and Verification Plan and used by Chevron Energy Solutions to calculate the EC Savings.

**“Baseline”** means the energy use established from time to time by Chevron Energy Solutions, as accepted by Fountain Valley SD, which acceptance shall not unreasonably be withheld, for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

**“Beneficial Use”** means when major new equipment and systems included in the Scope of Work are properly installed, inspected, completed any commissioning or acceptance testing, and operational, and are being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Attachment D.

**“Business Day”** means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by law or executive order to be closed.

**“Cancellation Costs”** is defined in Section 26.03(b).

**“CCD”** is defined in Section 6.05.

**“CEQA”** means the California Environmental Quality Act, codified at California Public Resource Code §21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

**“Certificate of Beneficial Use”** means the certificate, issued by Chevron Energy Solutions to Fountain Valley SD and subcontractor(s), which identifies when Fountain Valley SD took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**“Certificate of Final Completion”** means the certificate issued by Chevron Energy Solutions to Fountain Valley SD, in accordance with Section 6.03. A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**“Certificate of Substantial Completion”** means the certificate issued by Chevron Energy Solutions to Fountain Valley SD, in accordance with Section 6.02. A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

**“Change”** means any substantial addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services, including without limitation any such addition, deletion, suspension, or other modification that effects a change in the Scope of Work.

**“Change in Law”** means any of the following events or circumstances occurring after the Contract Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

**“Change Order”** means a written document, signed by both Chevron Energy Solutions and Fountain Valley SD, and ratified or approved by the Board of Trustees of Fountain Valley School District, authorizing Chevron Energy Solutions to perform a Change. The Change Order will modify the Scope of Work and will identify: (i) the applicable Change; (ii) any additional compensation to be paid to Chevron Energy Solutions to perform such Change; and (iii) any extensions of Time to the project schedule.

**“Chevron Energy Solutions”** is defined in the Preamble.

**“Chevron Energy Solutions Warranty”** is defined in ARTICLE 9.

**“Claims”** means any and all actions, claims, losses, damages, expenses, or liabilities of either Party arising from or related to this Contract, any addenda to this Contract, and/or Change Orders.

**“Construction”** means any Work to be performed that involves any and all construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

**“Construction Documents”** means the final designs, drawings, and specifications prepared by or on behalf of Chevron Energy Solutions, approved (if required) by DSA for implementation, and approved by Fountain Valley SD for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment included in the Project.

**“Construction Period”** means the period beginning with the issuance by Fountain Valley SD of a Notice to Proceed and continuing until the M&V Commencement Date.

**“Contract”** is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein), as well as all amendments, restatements, supplements and other modifications hereto.

**“Contract Amount”** means eight million, seventeen thousand, sixty-two dollars (\$8,017,062), exclusive of the Annual Envision Fee, the Annual M&V Fee and the Annual Maintenance Fee.

**“Contract Bonds”** is defined in Section 11.05.

**“Contract Effective Date”** is defined in the Preamble.

**“Delay”** means any circumstances beyond the control of Chevron Energy Solutions which cannot, be substantially mitigated by Chevron Energy Solutions through reasonable efforts, involving delay, disruption, hindrance or interference affecting the time of performance of the Work or Professional Services.

**“Dispute”** is defined in Section 23.01.

**“DOE Guidelines”** is defined in Section 14.01.

**“DSA”** means the California Division of State Architect.

**“EC Savings”** means the savings in units of dollars (\$) calculated in the manner set forth in the Savings Measurement and Verification Plan, achieved through the reduction in consumption or demand through implementation of the Work.

**“ECM”** is defined in the Recitals.

**“EMS”** means an energy management system.

**“Energy Delivery Point”** means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

**“Energy Rate Factors”** means factors identified by Chevron Energy Solutions which would be reasonably likely to affect utility rates from the local utility companies.

**“Energy Savings Report”** is defined in Section 22.04.

**“Energy Savings Term”** means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the fifth (5th) anniversary of the M&V Commencement Date; (ii) the termination of this Contract; (iii) the termination by Fountain Valley SD of the Savings Guarantee in accordance with Section 22.07; or (iv) the failure by Fountain Valley SD to pay the Annual M&V Fee in accordance with Section 22.08(a).

**“Energy Unit Savings”** means the savings in units of energy, power, water, etc., calculated in the manner set forth in the Savings Measurement and Verification Plan, achieved through the reduction in consumption or demand through implementation of the Work.

**“Energy Use Factors”** means factors identified by Chevron Energy Solutions which would be reasonably likely to substantially affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

**“Energy Use Savings”** means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

**“Environmental Incentives”** is defined in Section 14.03(a).

**"Envision Services"** is defined in Attachment E.

**"Event of Default"** is defined in ARTICLE 12.

**"Excess Savings"** means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in Section 22.09(d).

**"Excusable Delay"** means (i) any act or failure to act, or negligence of, Fountain Valley SD or its agents, employees or other Persons for whom Fountain Valley SD is responsible (expressly excluding, however, Chevron Energy Solutions when acting as agent or subcontractor under this Contract, whether in its individual capacity or as contractor) which have a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), including without limitation delay caused by the need to obtain ratification or approval of any Construction Document or Change Order by the Board of Trustees of Fountain Valley School District, (iii) Delays caused by Changes and/or modifications to the Scope of Work required by any Governmental Authority, other than a failure caused by the action or inaction of Chevron Energy Solutions, including, without limitation, the failure of Chevron Energy Solutions to submit information and materials reasonably necessary to secure such agreements, permits or entitlements, and/or make such modifications to the Scope of Work prudently and promptly as to mitigate any delay to the extent Chevron Energy Solutions is reasonably able to do so; (iv) changes in the design, scope or schedule of the Work required by any Governmental Authority or Fountain Valley SD, which have a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; (v) suspension of Work in whole or in part by Fountain Valley SD, other than suspension for cause; (vi) unforeseen site conditions, including discovery or existence of Hazardous Substances, which has a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; (vii) the occurrence of an event of Force Majeure; (viii) the failure to obtain, or delay in obtaining, approval of Governmental Authority (including DSA) for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of Chevron Energy Solutions, including, without limitation, the failure of Chevron Energy Solutions to submit information and materials reasonably necessary to secure such approvals, permits or entitlements, and/or make such modifications prudently and promptly as to mitigate any delay to the extent Chevron Energy Solutions is reasonably able to do so; (ix) any breach of this Contract by Fountain Valley SD or any breach of any Interconnection Agreement; (x) damage to any equipment or other item of Work caused by the act or omission of Fountain Valley SD, any of its agents or employees, or any other Person for whom Fountain Valley SD is responsible which has a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; (xi) information provided to Chevron Energy Solutions by Fountain Valley SD or Utility is later found to be inaccurate or incomplete, from which arises a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; (xii) any Change in Law which has a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts; or, (xiii) any other cause outside Chevron Energy Solutions' reasonable control, which has a detrimental impact on Chevron Energy Solutions' ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts.

**"Facilities"** is defined in the Recitals.

**"Final Completion"** means, with respect to the Work or any portion thereof, that each of the following has been achieved in accordance with the requirements of this Contract and the Construction Documents: (i) Punch List items are completed; (ii) required training of Fountain Valley SD personnel has occurred; (iii) required documentation has been provided to Fountain Valley SD, including, without limitation, O&M manuals, warranties, and as-built drawings in Auto-CAD format that incorporate as-built revisions and comments; (iv) testing of the Project has occurred in accordance with the requirements of this Contract, the results thereof meeting the requirements set forth herein, and acceptance by Fountain Valley SD of the successful testing has occurred, which acceptance shall not unreasonably be withheld; and (v) receipt of the permission to operate letter from the Utility.

**"Force Majeure"** means acts or events that are beyond the reasonable control of the affected Party and not caused by the negligence or fault of the other Party, which have a detrimental impact on the affected Party's ability to make reasonable progress in fulfilling its obligations, which impact cannot be mitigated by the affected Party's exercise of reasonable efforts, including but not limited to any of the following: (i) acts of God; (ii) acts of

the public enemy or terrorist acts; (iii) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (iv) work by local Utility; (v) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (vi) sabotage, vandalism, riots or civil disobedience; (vii) labor disputes or strikes; (viii) labor or material shortages, delay in manufacturing and deliveries of equipment (if such delay is caused by an event that would otherwise constitute Force Majeure); (ix) restraint by court order or Governmental Authority (whether valid or invalid); (x) inability to obtain or keep in force any Applicable Permit; (xi) Abnormally Severe Weather Conditions; (xii) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at Long Beach, California; (xiii) requirement by Utility that any Generating Facility discontinue operation for any reason; (xiv) appropriation or diversion of electricity by sale or order of any Governmental Authority; (xv) any other action by any Governmental Authority which prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); or (xvi) any Utility power outage at any Facility. Economic hardship shall not constitute an event of Force Majeure under this Contract.

“**Fountain Valley SD**” is defined in the Preamble.

“**Generating Facility**” means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment D, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect such solar power plant to the applicable Energy Delivery Point.

“**Governmental Authority**” means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question, including, without limitation, the Board of Trustees of Fountain Valley School District, the DSA and the local fire and life safety authorities.

“**Greenhouse Gas**” is defined in Section 14.01.

“**Guarantee Payment**” means, for any Measurement Period, either: (i) a cash payment by Chevron Energy Solutions to Fountain Valley SD in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to Section 22.01(b); or (ii) additional energy services or energy saving retrofits requested by Fountain Valley SD with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to Section 22.01(c).

“**Guarantee Shortfall**” means an amount calculated in accordance with Section 22.09(e).

“**Guaranteed Savings**” means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by Chevron Energy Solutions for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$347,652
2	\$363,479
3	\$380,032
4	\$397,342
5	\$415,446

“**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 *et seq.*, as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

“**Incentive Funds**” is defined in Section 8.07.

“**Installation**” means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

“**Instruments of Service**” is defined in Section 10.01(c).

**“Interconnection Agreement”** means the Interconnection Agreement to be entered into between Fountain Valley SD and the Utility with respect to the Generating Facilities.

**“Interconnection Facilities”** is defined in Section 21.02.

**“Interest”** means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The “prime rate” will be “Prime Rate” of interest per annum for domestic banks as published in The Wall Street Journal in the “Money Rates” section, or if such rate ceases to be published in The Wall Street Journal or The Wall Street Journal ceases publication, such other rate as agreed by the Parties.

**“IPMVP”** means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

**“Losses”** is defined in Section 11.01.

**“M&V Commencement Date”** means the first day of the month immediately following the later of (i) Chevron Energy Solutions’ receipt from Fountain Valley SD of the fully signed Certificate of Final Completion, and (ii) Chevron Energy Solutions’ receipt of the full Contract Amount.

**“Material Changed Condition”** means any of the following conditions that impact the project schedule and/or the Contract Amount, which has a detrimental impact on Chevron Energy Solutions’ ability to make prompt progress in fulfilling its obligations, which impact cannot be mitigated by Chevron Energy Solutions through the exercise of reasonable efforts: (i) delays in the project schedule caused by parties outside the control of Chevron Energy Solutions, excluding Chevron Energy Solutions’ subcontractors and material suppliers of every tier; (ii) the discovery of differing and unexpected site conditions not previously disclosed by Fountain Valley SD that could not have been discovered by Chevron Energy Solutions prior to the start of Work through the exercise of reasonable diligence; (iii) the discovery of Hazardous Substances not previously disclosed by Fountain Valley SD that could not have been discovered by Chevron Energy Solutions prior to the start of Work through the exercise of reasonable diligence; (iv) Abnormally Severe Weather Conditions; and (v) delay in equipment and material deliveries outside Chevron Energy Solutions’ control.

**“Measurement Period”** means each one-year period following the M&V Commencement Date.

**“NEC”** means the National Electric Code.

**“Notice to Proceed”** is defined in Section 2.04.

**“Party”** and **“Parties”** are defined in the Preamble.

**“Person”** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

**“PM Services”** is defined in Attachment K.

**“Premises”** means any real property owned by or under the possession, custody or control of Fountain Valley SD, including, without limitation, real property at which any Project Location is situated.

**“Professional Services”** means professional services provided by Chevron Energy Solutions to Fountain Valley SD under this Contract, including the Envision Services, the PM Services and the provision of the Savings Guarantee, the Energy Savings Reports and the related measurement and verification services.

**“Project”** means the entirety of Work to be performed by Chevron Energy Solutions pursuant to the Scope of Work, and any Change Orders.

**“Project Location”** means that area or areas where the Project materials and equipment and any other energy related equipment as described in the Scope of Work will be performed and/or installed.

**“Projected Energy Savings”** means those Energy Unit Savings, which the Parties anticipate will be realized from the installation and continued operation of the Work, as set forth in the Savings Measurement and Verification Plan.

**“Punch List”** means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair Fountain Valley SD’s ability to beneficially operate and utilize such portion of the Work.

**“Report”** is defined in the Recitals.

**“Request for Payment”** means a monthly progress payment as described in Section 8.01 or an invoice for materials stored off-site as described in Section 8.02.

**“Retainage”** is defined in Section 8.03.

“**Retained Items**” is defined in Section 10.02.

“**Savings Guarantee**” is defined in Section 22.01(a).

“**Savings Measurement and Verification Plan**” means the methodologies and calculations set forth in Attachment H, which provides for the quantification of Energy Unit Savings.

“**Scope of Work**” means the Work set forth in Attachments D and J, as modified by any Change Order.

“**Substantial Completion**” means, with respect to the Work or any portion thereof, that each of the following has been achieved in accordance with the requirements of this Contract and the final Construction Documents: (i) such portion of the Work is sufficiently complete to be usable for its intended function; (ii), with respect to a Generating Facility, the electrical systems and other infrastructure necessary to achieve interconnection of such Generating Facility with Fountain Valley SD’s facilities and the Utility’s electricity transmission system are capable of functioning properly, including, without limitation, accurate functioning of all related electricity meters; and (iii) Chevron Energy Solutions has performed the appropriate testing to confirm that such portion of the Work is capable of operating safely in accordance with all applicable laws, codes, rules and regulations.

“**Surety**” means the surety supplying the Contract Bonds, which will be an “admitted surety insurer,” as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to Fountain Valley SD.

“**Time**” means the time period within which Chevron Energy Solutions will complete the Work in accordance with the project schedule.

“**Utility**” is defined in Section 21.02.

“**Work**” means the Work to be done by Chevron Energy Solutions pursuant to the Scope of Work, subject to any Change Orders.

**ARTICLE 2. TERM; PERFORMANCE OF THE WORK**

Section 2.01 Contract Term. The term of this Contract will commence on the Contract Effective Date and, unless terminated early as provided in this Contract, will end on the later of (i) the effective date of the Certificate of Final Completion or (ii) the last day of the last Measurement Period in which Professional Services were provided.

Section 2.02 Performance of Work and Professional Services.

- (a) The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. Chevron Energy Solutions shall perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code, Title 24 of the California Code of Regulations, Southern California Edison (SCE) Interconnection Requirements, and the requirements of DSA. Chevron Energy Solutions represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein must meet the approval of Fountain Valley SD, such approval to be granted or denied in accordance with the requirements set forth in this Contract, and shall be subject to Fountain Valley SD’s general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.
- (b) In addition, Chevron Energy Solutions (or one or more of its subcontractors) will be and serve as the architect, structural engineer or professional engineer in general responsible charge of the Project and Chevron Energy Solutions (or one or more of its subcontractors) will fulfill all responsibilities required thereof under the Field Act and related regulations and rules and policies promulgated by DSA, including, without limitation, all duties required thereof under Title 24 of California Administrative Code at §§ 4-316 and 4-341, to the extent directly related to the Scope of Work. Chevron Energy Solutions will also be and serve as the contractor of record on the Project and will fulfill all responsibilities required thereof under the Field Act and related regulations and rules and policies promulgated by DSA, including, without limitation, all duties required thereof under Title 24 of California Administrative Code at §§ 4-316 and 4-343, to the extent directly related to the Scope of Work.

Section 2.03 Scope of Work and Professional Services. Chevron Energy Solutions will provide design-build services for the Project as detailed below:

- (a) The Scope of Work will be as set forth in Attachments D and J, except pursuant to a Change Order.

- (b) The Professional Services will be as set forth in ARTICLE 22 and in Attachments E and K, except pursuant to a Change Order.

**Section 2.04     Project Schedule; Notice to Proceed.**

- (a) After the Contract Effective Date, Chevron Energy Solutions will develop, with input from and subject to the approval of Fountain Valley SD, a master project schedule using Microsoft Project®. Chevron Energy Solutions will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project schedule will be updated monthly. Chevron Energy Solutions will coordinate with Fountain Valley SD to mitigate, to the extent reasonable, any substantial inconvenience and disruption to students, faculty, and staff in their regular school activities and to otherwise avoid unnecessary interference with normal operations of the nearest school campus.
- (b) Within ten (10) days after Fountain Valley SD has closed the financing referenced in Section 2.07(a), Fountain Valley SD will issue to Chevron Energy Solutions a written Notice to Proceed ("Notice to Proceed"). If Fountain Valley SD fails to issue the Notice to Proceed within twenty (20) days after the financing has closed, Chevron Energy Solutions will be entitled to an appropriate extension of Time and/or an appropriate adjustment in the Contract Amount as a result of such delay.
- (c) Subject to adjustments of Time as set forth herein, Chevron Energy Solutions will achieve Substantial Completion of the Work by no later than the date that is eighteen (18) months after the date on which it receives the Notice to Proceed.

**Section 2.05     Fountain Valley SD's Energy and Operational Records and Data.** Promptly after the date hereof, Fountain Valley SD will provide Chevron Energy Solutions any updates to its Energy Usage Data not previously provided to Chevron Energy Solutions. "Energy Usage Data" means all of Fountain Valley SD's records and complete data requested by Chevron Energy Solutions concerning, without limitation, energy usage, energy-related maintenance, and other related costs for the Facilities, and including without limitation utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings, specifications, existing AutoCAD files, O&M manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. Fountain Valley SD agrees that Chevron Energy Solutions may rely on the foregoing data as being accurate in all respects. If requested, Fountain Valley SD will also provide any prior energy audits of the Facilities, and copies of Fountain Valley SD's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of Chevron Energy Solutions.

**Section 2.06     Additional Work.** Fountain Valley SD will take reasonable steps to obtain any necessary approvals in accordance with California Government Code §§4217.10 through 4217.18 in relation to the Scope of Work, as originally agreed to herein and as modified by Change Order. If Chevron Energy Solutions determines that a Change Order is subject to the requirements of California Government Code §4217, Fountain Valley SD will take reasonable steps to obtain any necessary approvals in accordance with California Government Code §§4217.10 through 4217.18. In any event, the Board of Trustees of the Fountain Valley School District may, in its sole discretion, make or reject any findings required thereof under California Government Code §§4217.10 through 4217.18.

**Section 2.07     Finance Contingency.**

- (a) It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon Fountain Valley SD closing third-party financing that will allow it to make the payments to Chevron Energy Solutions envisioned by this Contract. Upon execution of this Contract, Fountain Valley SD will have thirty (30) calendar days to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice. It is acknowledged and agreed that Chevron Energy Solutions has already started the design and engineering portion of the Work, and that this and any other Work commenced by Chevron Energy Solutions prior to receipt of the Notice to Proceed is and will be at Chevron Energy Solutions' risk.
- (b) In addition to the third-party financing described in Section 2.07(a), Fountain Valley SD intends to apply for, and expects to receive, funding from California Proposition 39 in the approximate amount of \$408,000 annually for five years. If Fountain Valley SD does not receive such funding, Fountain Valley SD and Chevron Energy Solutions agree to negotiate in good faith a deductive Change Order providing for a reduction in the Scope of Work, including engineering, a revision of the project schedule and an adjustment to the Contract Amount that meets Fountain Valley SD's financial criteria.

**ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL**

Section 3.01 Permits and Approvals.

- (a) Chevron Energy Solutions is responsible for obtaining (but not paying for) permits and approvals required for the building, installation, and start-up of the Work hereunder. Fountain Valley SD will be responsible for obtaining and paying for any other permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable. Fountain Valley SD is also responsible for all fees associated with plan checks, permits, inspections and utility interconnection(s), including any additional Scope of Work that may be required by the Utilities as part of the Interconnection Agreement(s). Fountain Valley SD will exercise reasonable efforts to cooperate with and assist Chevron Energy Solutions in obtaining all Applicable Permits required under this Contract.
- (b) Subject to all clarifications and exclusions set forth in the Scope of Work, Chevron Energy Solutions will assist Fountain Valley SD in (i) the preparation and submission to the Utility of an application and documentation necessary in order to interconnect the Work to the Utility's electric distribution grid, including, without limitation, an Interconnection Agreement, and (ii) providing notices required by the Utility or Applicable Law in order to comply with the Interconnection Agreement and Applicable Law. Chevron Energy Solutions cannot guarantee that Fountain Valley SD will receive approval for interconnection.

Section 3.02 Coordination During Installation.

- (a) When performing construction, installation, removal, maintenance and/or any other operations on or about the Premises, Chevron Energy Solutions will, as contemplated by Attachment L, install a physical barrier at the Project Location to limit contact between Chevron Energy Solutions' employees and personnel, and the employees and personnel of its subcontractors, and any pupils of Fountain Valley SD.
- (b) Chevron Energy Solutions shall not leave debris under, in, or about the Premises outside the Project Location, but shall promptly remove same from the Premises and dispose of it in a lawful manner.
- (c) Chevron Energy Solutions shall remove rubbish and debris from the Project Location on a regular basis during the Construction Period, and concurrent with its regularly scheduled maintenance visits when performing PM Services.
- (d) Provide industry-standard fencing and/or demarcations around any shrubs or trees indicated to be preserved at the Project Location, sufficient to protect such foliage from substantial damage that might ordinarily occur on a project such as the Work.
- (e) Deliver personnel, tools, equipment and materials to the Project Location over route(s) reasonably designated by Fountain Valley SD, provided that Fountain Valley SD ensures that Chevron Energy Solutions shall have all access rights necessary to use such designated routes.
- (f) Take reasonable measures to mitigate objectionable dust, noise, or other disturbances at the Project Location. Notwithstanding the forgoing, Fountain Valley SD acknowledges and agrees that the Work involves construction activities and may, despite Chevron Energy Solutions' efforts hereunder, result in dust, noise and other disturbances.
- (g) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or the reasonable directions of Fountain Valley SD, not unreasonably encumber Premises or overload any structure with materials, enforce reasonable instructions of Fountain Valley SD regarding signs, advertising, fires, and smoking and require that all Chevron Energy Solutions employees and subcontractors on the Premises comply with Fountain Valley SD's regulations, to the extent such regulations have been provided to Chevron Energy Solutions prior to the Contract Effective Date.
- (h) Prior to any Chevron Energy Solutions employee or personnel, or any employee(s) or personnel of any subcontractor thereto, enters onto the Premises, Chevron Energy Solutions shall execute and abide by the certification attached hereto as Attachment L.
- (i) Upon completion of the Work, Chevron Energy Solutions shall remove temporary utilities, fencing, barricades, planking, sanitary facilities and all similar temporary facilities from Premises.
- (j) Chevron Energy Solutions will exercise reasonable care to protect Fountain Valley SD's property from damage or degradation, and to preserve Fountain Valley SD's property in substantially the condition in which it was at the time of commencement of any activities by Chevron Energy Solutions on the Premises.
- (k) Fountain Valley SD and Chevron Energy Solutions will otherwise make reasonable efforts to coordinate the activities of Chevron Energy Solutions and Chevron Energy Solutions' subcontractors and suppliers with those of Fountain Valley SD, its employees, and agents.

Section 3.03 Project Meetings/Status Updates. During the Design and Construction Phases of the Project, Chevron Energy Solutions will meet with Fountain Valley SD to review equipment, scope of work, and installation plans that relate to the design and construction of the Project. Also during the course of the Work, Chevron Energy Solutions will periodically provide reports to Fountain Valley SD of the general status and progress of the Work. Chevron Energy Solutions may (but is not required to) make inexpensive food and beverage items available to Fountain Valley SD and Fountain Valley SD's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.04 Project Location Access. Fountain Valley SD hereby grants to Chevron Energy Solutions, without cost to Chevron Energy Solutions, rights of ingress and egress to the Project Locations identified in the Scope of Work, necessary for Chevron Energy Solutions to perform all Work contemplated by this Contract and the Scope of Work, subject to coordination with Fountain Valley SD as described in Section 2.04(a). Chevron Energy Solutions will provide twenty-four-hour advance notice to Fountain Valley SD for access to any Fountain Valley SD Premises. Chevron Energy Solutions may (but is not required to) make transportation available to Fountain Valley SD and Fountain Valley SD's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Unless otherwise specified herein, each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that Chevron Energy Solutions, and any agents and employees of Chevron Energy Solutions, its subcontractors and/or consultants, in the performance of this Contract, is acting in an independent capacity and not as a public official, officer, employee, consultant, or agent of Fountain Valley SD for purposes of conflict of interest laws or any other Applicable Law. The Parties hereto further agree that, unless otherwise specified herein, each Party shall remain responsible to the other Party for the acts and omissions of its agents and employees, its subcontractors and/or consultants, in the performance of this Contract.

#### **ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT**

##### Section 4.01 General Provisions.

- (a) As soon as possible after the Contract Effective Date, Chevron Energy Solutions will proceed with due diligence and speed to prosecute the timely preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) After completion of the design phase and approval of the final plans and specifications by DSA and Fountain Valley SD, Chevron Energy Solutions will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule. Delay by DSA in approving Chevron Energy Solutions' Construction Documents for reasons attributable to Fountain Valley SD, such as open A-numbers, that prevents Chevron Energy Solutions from proceeding with Construction, will constitute a valid basis for a Change Order. Chevron Energy Solutions will be compensated, and receive an extension of Time for performance, if necessary, to the extent expressed in the relevant Change Order.
- (c) Fountain Valley SD will designate a single-point representative with whom Chevron Energy Solutions will consult on a reasonable, regular basis and who is authorized to act on Fountain Valley SD's behalf with respect to the Project design. Fountain Valley SD's representative will act promptly and diligently to render decisions with regard to any documents submitted by Chevron Energy Solutions and to other requests made by Chevron Energy Solutions in order to avoid unreasonable delay in the orderly and sequential progress of Chevron Energy Solutions' design services. Fountain Valley SD's representative will be responsible for, and is expected to, communicate with other Fountain Valley SD personnel, consultants, Board of Trustees and stakeholders in analyzing and determining responses to Chevron Energy Solutions, and will do so in order to promptly formulate responses to Chevron Energy Solutions.
- (d) Promptly after Chevron Energy Solutions' request, Fountain Valley SD will:
  - (i) furnish all surveys or other information in Fountain Valley SD's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;

- (ii) disclose any prior environmental review documentation and all known information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location where the Work will be performed pursuant to the Scope of Work; and
  - (iii) supply Chevron Energy Solutions with all relevant information in Fountain Valley SD's possession, including any as-built drawings and photographs, of prior construction undertaken in the general area where the Work will be performed pursuant to the Scope of Work.
- (e) Within a reasonable time after Chevron Energy Solutions' request, Fountain Valley SD will obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location site essential to the execution of the Work. Fountain Valley SD acknowledges that any failure to timely obtain such authorizations in accordance with the project schedule described in Section 2.04(a) may result in an Excusable Delay as defined herein.
- (f) All information furnished pursuant to this Section 4.01 will be supplied at Fountain Valley SD's expense. Such information shall be disclosed to Chevron Energy Solutions as-is, without warranty as to its accuracy or completeness, Chevron Energy Solutions will be responsible for completing any and all investigation it deems necessary to assess physical characteristics, utility locations, and subsurface or otherwise concealed conditions at the Project Location prior to producing final Construction Documents and prior to proceeding with any Construction. Fountain Valley SD acknowledges that any failure to provide the information specified in Section 4.01(c) to Chevron Energy Solutions may result in an Excusable Delay as defined herein.
- (g) In the event that any information is disclosed under this Section 4.01 that, in the opinion of Chevron Energy Solutions, constitutes a Change to the Work and/or is a Material Changed Condition, Chevron Energy Solutions will provide notice to Fountain Valley SD promptly after receipt of this information, and the Parties will meet and confer with respect to whether the information constitutes a Change. If Fountain Valley SD authorizes a Change Order, Chevron Energy Solutions will be compensated, and receive an extension of Time for performance, if necessary, to the extent expressed in the relevant Change Order. If the Parties are unable to agree on whether Fountain Valley SD's disclosed information constitutes a Change to the Work or a Material Changed Condition, those disputes will be resolved in accordance with ARTICLE 23.
- (h) Chevron Energy Solutions contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a Pre-Existing Condition by Fountain Valley SD prior to the execution of this Contract. However, any discovery or disclosure of Hazardous Substances that will substantially affect the performance of the Work after the execution of this Contract will constitute a valid basis for a Change Order. Chevron Energy Solutions will be compensated, and receive an extension of Time for performance, if necessary, to the extent expressed in the relevant Change Order.

Section 4.02 Review of Construction Documents. Chevron Energy Solutions will prepare and submit all designs, drawings, and specifications to Fountain Valley SD for review. Fountain Valley SD will promptly and diligently review the documents and provide any comments in writing to Chevron Energy Solutions. Chevron Energy Solutions will incorporate appropriate Fountain Valley SD comments into the final designs, drawings, and specifications, as applicable. The terms and conditions of any permit approvals required for the Project will be provided. Chevron Energy Solutions reserves the right to issue the designs, drawings, and specifications in phases to allow the construction to be performed in phases. If Fountain Valley SD unreasonably withholds or delays written comments, Fountain Valley SD will be deemed to have no comments regarding the documents. Any comments or lack of comments from Fountain Valley SD shall not comprise or be deemed an approval of the professional services of Chevron Energy Solutions, and shall not be deemed to comprise a peer review or assumption by Fountain Valley SD of any risk for professional errors or omissions in the preparation of designs, drawings, or specifications.

Section 4.03 Permits and Approvals. The respective obligations of the Parties in obtaining permits and approvals are as specified in Section 3.01. Fountain Valley SD shall not unreasonably withhold its consent to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount provided for in the Scope of Work will be increased by any additional cost incurred by Chevron Energy Solutions due to a material change required by a Governmental Authority and the Time required to complete the Work pursuant to the project schedule will be increased by the number of additional days reasonably required and actually incurred by Chevron Energy Solutions to complete the Work because of a material change in the Project imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase Fountain Valley SD requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, Fountain Valley SD and Chevron Energy Solutions shall negotiate in good faith a Change Order for any

additional services reasonably necessary to accommodate such request or discovery of Material Changed Conditions. Valid bases for additional compensation and/or Time extension include, but are not limited to:

- (i) Changes and/or modifications to the Scope of Work during the Project design phase agreed to by and between the Parties;
- (ii) Delays caused by Fountain Valley SD which have an adverse impact on the progress of Chevron Energy Solutions' design work;
- (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date that causes an adverse impact on the progress of Chevron Energy Solutions' work and/or the cost of completion of the Scope of Work;
- (iv) the discovery of Hazardous Substances at or impacting the Project Location that cause(s) an adverse impact on the progress of Chevron Energy Solutions' work and/or the cost of completion of the Scope of Work;
- (v) damage to any equipment or other Work installed by Chevron Energy Solutions caused by the acts or omissions of Fountain Valley SD, its agents or employees;
- (vi) changes and/or modifications to the Scope of Work ordered by any Governmental Authority; and
- (vii) any other condition that would not reasonably have been anticipated by Chevron Energy Solutions that modifies and/or changes the Scope of Work that increases the agreed upon Contract Amount or increases in the Time needed to complete the Work identified in the Scope of Work.

**ARTICLE 5. CONSTRUCTION PHASE**

Section 5.01 General Provisions. Upon securing necessary permits, pursuant to Section 3.01, and completion of final Construction Documents by Chevron Energy Solutions and approval thereof by DSA and Fountain Valley SD, Chevron Energy Solutions will commence the construction of the Project in accordance with the final Construction Documents. The construction will be performed by Chevron Energy Solutions and/or one or more licensed subcontractors qualified to perform the Work. The construction will be performed in accordance with all Applicable Laws and Applicable Permits.

Section 5.02 Chevron Energy Solutions' Responsibilities During Construction Phase.

- (a) As an independent contractor to Fountain Valley SD, Chevron Energy Solutions will be responsible for providing, or causing to be provided by Chevron Energy Solutions' subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work as defined in the Scope of Work and any Change Orders. Chevron Energy Solutions is hereby required to purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. Chevron Energy Solutions will also be responsible for all means, methods, techniques, sequences, and procedures employed for the construction required by the final Construction Documents.
- (b) Chevron Energy Solutions will provide reasonable notice to Fountain Valley SD of any planned power outages that will be necessary for the construction. Chevron Energy Solutions will reasonably cooperate with Fountain Valley SD in scheduling such outages, and Fountain Valley SD agrees to provide its reasonable approval of any scheduled outage. Chevron Energy Solutions will exercise reasonable efforts to minimize the duration of any outages, and to coordinate with Fountain Valley SD to schedule such outages at times that will have no substantial impact on Fountain Valley SD educational programs as well as no substantial impact on the project schedule. In any event, Chevron Energy Solutions will not be entitled to any delay or Change Order resulting from such planned power outages exceeding the anticipated time, unless such extended outage results from an event of Force Majeure.
- (c) Chevron Energy Solutions will be responsible for initiating and maintaining safety precautions and programs in connection with its construction of the Project. Chevron Energy Solutions will take reasonable precautions for the safety of, and will exercise reasonable efforts to provide protection to prevent damage, injury, or loss to: (1) employees of Chevron Energy Solutions and subcontractors performing Work under this Contract; (2) Chevron Energy Solutions' property and other materials to be incorporated for the Project, under the care, custody, and control of Chevron Energy Solutions or its subcontractors; and (3) other

property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction.

- (d) Chevron Energy Solutions will provide notice to Fountain Valley SD of any scheduled test(s) of installed equipment, and Fountain Valley SD and/or its designees will have the right to be present at any or all such tests conducted by Chevron Energy Solutions, any subcontractor, and/or manufacturers of the equipment. Chevron Energy Solutions will be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that Chevron Energy Solutions provided and installed that may be observed during equipment commissioning procedures.
- (e) The following additional duties will be performed by Chevron Energy Solutions:
  - (i) Organize and conduct a pre-construction meeting with Fountain Valley SD and each subcontractor.
  - (ii) Organize and conduct regularly scheduled progress meetings throughout the installation period.
  - (iii) Schedule and manage all subcontractors and related work.
  - (iv) Provide Fountain Valley SD a single point of contact and responsibility for all Work related to the Project.
  - (v) Investigate and resolve design, construction, and field issues as they arise during the Project
  - (vi) Coordinate on-site Work, and schedule accordingly with Fountain Valley SD.
  - (vii) Perform progress inspections throughout the installation period. Provide Fountain Valley SD and subcontractor with results of findings.
  - (viii) Identify any existing Fountain Valley SD equipment that is found during implementation of the Work not to be functioning properly, and notify in writing to Fountain Valley SD.
  - (ix) Provide regular status reports to Fountain Valley SD.
  - (x) When appropriate, initiate a thorough inspection of the Work with Fountain Valley SD and subcontractor to obtain Substantial Completion.
  - (xi) Check, test, and start-up each item of equipment.
  - (xii) Perform a point-by-point hardware commissioning of Chevron Energy Solutions installed energy management system. Identify any EMS items that are not functioning properly, and include on the Punch List.
  - (xiii) Identify any existing Fountain Valley SD equipment that is found during EMS commissioning not to be functioning properly, and notify in writing to Fountain Valley SD.
  - (xiv) Perform a complete software/programming commissioning of the energy management system. Identify any EMS items that are not programmed per specification, and include on the Punch List.
  - (xv) With Fountain Valley SD and subcontractor, perform final inspection of the Work.
  - (xvi) Review subcontractor invoices and authorize payment as appropriate.
  - (xvii) Obtain/prepare final as-built documentation for the Project, and deliver to Fountain Valley SD. Documentation will include O&M manuals as appropriate, warranty information, and as-built drawings and related information.
- (f) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, Chevron Energy Solutions will, in advance of excavation, submit to Fountain Valley SD and/or a registered civil or structural engineer, employed by Fountain Valley SD, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions shall be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Fountain Valley SD or by the person to whom authority to accept has been delegated by Fountain Valley SD. Pursuant to California Labor Code §6705, nothing in this Section 5.02(f) imposes tort liability on Fountain Valley SD or any of its employees.
- (g) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:

- (i) Chevron Energy Solutions shall promptly, and before the following conditions are disturbed, notify Fountain Valley SD, in writing, of any:
  - 1) Material that Chevron Energy Solutions believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
  - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Chevron Energy Solutions before the Contract Effective Date;
  - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
- (ii) Fountain Valley SD shall promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in Chevron Energy Solutions' cost of, or the Time required for, performance of any part of the Work shall issue a Change Order under the procedures described in this Contract.
- (iii) In the event that a dispute arises between Fountain Valley SD and Chevron Energy Solutions, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Chevron Energy Solutions' cost of, or Time required for, performance of any part of the Work, Chevron Energy Solutions shall not be excused from any scheduled completion date provided for by this Contract but shall proceed with all Work to be performed under this Contract. Chevron Energy Solutions shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.
- (h) Pursuant to California Education Code §32244, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project. Fountain Valley SD acknowledges and agrees that actions to abate existing risk factors for lead are expressly excluded from the Scope of Work and the Professional Services, and Chevron Energy Solutions shall have no obligation to take any such abatement action.

**Section 5.03 Fountain Valley SD's Responsibilities During Construction Phase.**

- (a) Fountain Valley SD will designate a single-point representative authorized to act on Fountain Valley SD's behalf with respect to Project construction and/or equipment installation, excluding any authority to approve any Change Order or otherwise modify this Contract or take any action binding Fountain Valley SD to any further or additional obligation, including, without limitation, to make any representation, commitment or obligation pursuant to which Fountain Valley SD would incur any cost or expense beyond the Contract Amount. Fountain Valley SD may from time to time change the designated representative and will provide notice to Chevron Energy Solutions of such change. Any independent review of the construction will be undertaken at Fountain Valley SD's sole expense, and it will be performed promptly and diligently so as to not unreasonably delay the orderly progress of the Work. Any independent review of the construction by Fountain Valley SD will not relieve Chevron Energy Solutions of any of its obligations or responsibilities hereunder. Fountain Valley SD's representative will be responsible for, and is expected to, communicate with other Fountain Valley SD personnel, consultants, Board of Trustees and stakeholders in analyzing and determining responses to any communication from Chevron Energy Solutions, and will do so in order to promptly formulate responses to Chevron Energy Solutions.
- (b) Fountain Valley SD will provide a temporary staging area for Chevron Energy Solutions, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Fountain Valley SD will provide sufficient space at the Facilities for the performance of the Work and the installation, storage, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Fountain Valley SD will provide access to the Facilities, including parking permits and identification tags, reasonably necessary for Chevron Energy Solutions and subcontractors to perform the Work hereunder during regular business hours, or such other reasonable hours as may be requested by Chevron Energy Solutions and acceptable to Fountain Valley SD. Fountain Valley SD will also either provide a set or sets of keys to Chevron Energy Solutions and its subcontractors (signed out per Fountain Valley SD policy) or provide a readily available security escort to unlock and lock doors within the Project Location. Fountain Valley SD will not unreasonably restrict Chevron Energy Solutions' access to Facilities to make emergency repairs or corrections as it may determine are needed.
- (c) Fountain Valley SD will remain responsible for the maintenance of the portion of the Project Location that is not directly affected by Chevron Energy Solutions' Work. Fountain Valley SD will keep the designated

Project Location and staging area for the Project free of obstructions, waste, and materials within the control of Fountain Valley SD.

- (d) Fountain Valley SD will be solely responsible for obtaining any required environmental clearance from and any special permits required by any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.
- (e) Fountain Valley SD will be responsible for the preparation of the designated Project Location site for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by Fountain Valley SD and such documentation made available to Chevron Energy Solutions are the responsibility of Fountain Valley SD. If Chevron Energy Solutions encounters such unforeseen conditions in the performance of the Work, Chevron Energy Solutions will be entitled to a Change Order providing for additional compensation, an extension of Time and a revision of the project schedule.
- (f) Fountain Valley SD will be solely responsible for the removal of any Hazardous Substances either known to Fountain Valley SD prior to the commencement of the Work or encountered by Chevron Energy Solutions during the construction of the Project, if necessary in order for the Work to progress safely, that was not knowingly released or brought to the site by Chevron Energy Solutions. Chevron Energy Solutions will respond to the discovery of Hazardous Substances at or around the Project Location during the course of Chevron Energy Solutions' construction in accordance with Section 5.06.
- (g) Fountain Valley SD will coordinate the Work to be performed by Chevron Energy Solutions with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that Chevron Energy Solutions will coordinate the Interconnection Facilities work, if any, that will be performed by the local utility.
- (h) Fountain Valley SD will allow Chevron Energy Solutions and its subcontractors access to and reasonable use of necessary quantities of Fountain Valley SD's water and other utilities, including electrical power, as needed for the construction of the Work, at no extra cost to Chevron Energy Solutions.
- (i) Fountain Valley SD will provide Chevron Energy Solutions and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost to Chevron Energy Solutions, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.
- (j) Fountain Valley SD will also do the following:
  - (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
  - (ii) When appropriate, participate in the job inspection walk-through with Chevron Energy Solutions and the subcontractor to determine Substantial Completion or beneficial use of major equipment. Sign the Certificate of Substantial Completion, as appropriate.
  - (iii) Perform a final walk-through of the Project. Upon receipt of the O&M Manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
  - (iv) Fountain Valley SD is encouraged to provide a staff member(s) (HVAC technician, etc.) to accompany Chevron Energy Solutions during the EMS Commissioning. This is an excellent opportunity to learn in-depth the operation and installation of the EMS.
  - (v) Provide knowledgeable staff to participate in the training programs, which will be scheduled in advance for proper coordination.
  - (vi) Upon the completion of the entire Scope of Work listed in Attachments D and J, including training, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

**Section 5.04 Changes During Construction.**

- (a) Change Orders Generally. Changes and/or modifications to the Scope of Work will only be authorized by a written Change Order signed by both Fountain Valley SD and Chevron Energy Solutions. The Change Order will state the change and/or modification to the Scope of Work, any additional compensation to be paid, or extension of Time, if needed, to Chevron Energy Solutions to perform such change and/or modification. Chevron Energy Solutions may, at its election, immediately suspend performance of that portion of the Work affected by any proposed Change Order based upon discovery of Materially Changed

Conditions until an agreement has been reached with Fountain Valley SD regarding the Change Order, or suspend performance of that portion of the Work affected by any other Change upon prior written notice to Fountain Valley SD. Chevron Energy Solutions will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change Order until such time as the Change Order is resolved. In addition, if Fountain Valley SD requests a proposal from Chevron Energy Solutions for a change to the Scope of Work and Fountain Valley SD subsequently elects to not proceed with such change, Fountain Valley SD agrees that a Change Order will be issued to reimburse Chevron Energy Solutions for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by Fountain Valley SD.

- (b) Change Orders Requiring Additional Compensation. If during construction Fountain Valley SD requests changes and/or modifications to the Work identified in the Scope of Work, there are Excusable Delays, and/or there are Material Changed Conditions, Fountain Valley SD will be responsible for payment of the extra costs caused by such modifications and/or changes and Chevron Energy Solutions will be entitled to additional compensation for the following reasons, that include, but are not limited to: (1) Fountain Valley SD requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (2) Fountain Valley SD caused delays during Chevron Energy Solutions' construction work; (3) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (4) discovery of Hazardous Substances at or impacting the Project Location; (5) changes and/or modifications to the Scope of Work required to obtain required permits and approvals as required by any Governmental Authority; (6) damage to any equipment or other Work installed by Chevron Energy Solutions caused by the act or omission of Fountain Valley SD, its agents or employees; (7) changes and/or modifications to Scope of Work ordered by any Governmental Authority; and (8) any other condition that would not reasonably have been anticipated by Chevron Energy Solutions, which Chevron Energy Solutions cannot mitigate through reasonable efforts, that modifies and/or changes the Scope of Work or the Contract Amount. The items and amounts of compensable extra costs caused by such modifications and/or changes, as well as compensation to Chevron Energy Solutions in relation thereto, shall be negotiated by the Parties and shall not be based upon either Party's sole determination. If there is a disagreement between Fountain Valley SD and Chevron Energy Solutions as to the requirement for, items of or amounts of additional compensation, those disputes will be resolved in accordance with the provisions of ARTICLE 23.
- (c) Change Orders Requiring Additional Time / Excusable Delays. If during construction Fountain Valley SD requests changes and/or modifications to the Work identified in the Scope of Work and/or there are Material Changed Conditions, the Parties agree that a reasonable extension of Time to the project schedule may be necessary to perform such modifications and/or changes. In addition, if Chevron Energy Solutions is delayed at any time in the progress of the Work for any reason beyond its control, which Chevron Energy Solutions cannot mitigate through reasonable efforts, including, but not limited to, any Excusable Delay, then the targeted dates set forth in the project schedule will be reasonably extended by a Change Order. Prior to the extension of such dates, Chevron Energy Solutions will use reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that Fountain Valley SD has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith. The items and duration of compensable delays caused by such modifications and/or changes, as well as compensation to Chevron Energy Solutions in relation thereto, shall be negotiated by the Parties and shall not be based upon either Party's sole determination. If there is a disagreement between Fountain Valley SD and Chevron Energy Solutions as to such additional Time or Excusable Delays, those disputes will be resolved in accordance with the provisions of ARTICLE 23.
- (d) Material Changed Conditions/ Conditions Beyond Chevron Energy Solutions' Control. Chevron Energy Solutions will provide written notice to Fountain Valley SD of any Material Changed Condition and or any event of Force Majeure, promptly following Chevron Energy Solutions' first discovery of such Material Changed Condition or event of Force Majeure. In the event that Chevron Energy Solutions' notice concerns unanticipated subsurface conditions, including soil conditions, or Hazardous Substances, Chevron Energy Solutions will not disturb the condition until said notice has been given to Fountain Valley SD, and Fountain Valley SD has had a reasonable opportunity to investigate the condition. If there is a disagreement between Fountain Valley SD and Chevron Energy Solutions as to whether a Change Order should be issued and executed because of the Material Changed Condition and/or condition beyond Chevron Energy Solutions' control, those disputes will be resolved in accordance with the provisions of ARTICLE 23. Pending the resolution of any dispute between Chevron Energy Solutions and Fountain Valley SD concerning a Material Changed Condition and/or change beyond Chevron Energy Solutions' control, Chevron Energy Solutions reserves the right to suspend Work pending the resolution of the dispute.

- (e) Change Order – Savings Effect. Chevron Energy Solutions will calculate the energy impact of any Fountain Valley SD change orders. As applicable, the energy impact may change the projected savings level and the Guaranteed Energy Savings amount.

Section 5.05 Minor Changes to Scope of Work. Chevron Energy Solutions will have authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the final Construction Documents, as amended by Change Order, without prior notice to Fountain Valley SD. Chevron Energy Solutions will either promptly inform Fountain Valley SD, in writing, of any minor changes made during the implementation of the Project, or make available to Fountain Valley SD at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) Chevron Energy Solutions will promptly provide written notice to Fountain Valley SD if Chevron Energy Solutions observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. Chevron Energy Solutions will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. Fountain Valley SD will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. Fountain Valley SD will be responsible for complying with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. Chevron Energy Solutions will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, Fountain Valley SD will provide Chevron Energy Solutions, promptly following the execution of this Contract, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Work area, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) Fountain Valley SD will indemnify, defend, and hold Chevron Energy Solutions harmless from and against any and all Losses that in any way result from or arise under from such Fountain Valley SD owned or generated Hazardous Substances, except for liabilities due to the negligence or willful misconduct of Chevron Energy Solutions, or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within Fountain Valley SD's facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of Chevron Energy Solutions' Work, (iii) may cause Chevron Energy Solutions' completed Work to be non-compliant with applicable codes, (iv) may prevent Fountain Valley SD from realizing the full benefits of Chevron Energy Solutions' Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Chevron Energy Solutions' Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Chevron Energy Solutions will not be responsible for repairing such pre-existing conditions unless such is expressly provided for in the Scope of Work or an approved change thereto. Chevron Energy Solutions, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a change order with Fountain Valley SD for additional compensation and, if appropriate, an extension of time. Examples of pre-existing conditions include, but are not limited to, the following:

- (a) With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, Fountain Valley SD will be responsible for properly grounding lighting fixtures before Chevron Energy Solutions commences Work in compliance with applicable codes.
- (b) With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Fountain Valley SD will be responsible for providing an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC. Chevron Energy Solutions' Scope of Work will include properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- (c) Where Chevron Energy Solutions' Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor will be included in the lighting circuits. Fountain Valley SD is

responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the facility grounding electrode system in compliance with the latest NEC.

- (d) With respect to Chevron Energy Solutions Projects with new equipment connecting to the facility's existing electrical distribution system, Chevron Energy Solutions will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Fountain Valley SD is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines.
- (e) Chevron Energy Solutions is not responsible for repairing or replacing existing damaged, blocked, or leaky ductwork, or cleaning dirt or mildew.
- (f) Chevron Energy Solutions will not be responsible for existing damaged pipes, valves, and related parts and components due to a lack of water treatment.
- (g) Existing pneumatic control systems that remain in place will be properly maintained (use of air dryer, clean filter, etc.) by Fountain Valley SD such that oil or moisture does not reach the control and operating devices.
- (h) Unless specifically included in the Scope of Work, existing valves, dampers, linkages, and piping specialties to which new controls/building automation system are being connected are to be in proper functioning condition. If existing device is found to be improperly functioning, Fountain Valley SD may repair or compensate Chevron Energy Solutions for repair / replacement of the device.

#### **ARTICLE 6. PROJECT COMPLETION**

Section 6.01 Occupancy and Use. Fountain Valley SD may take use and occupancy of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that Fountain Valley SD assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Use and occupancy will not commence until Fountain Valley SD's insurance company has consented to such occupancy or use. When occupancy and use of a portion of the Work occurs before Substantial Completion of such portion, Fountain Valley SD and Chevron Energy Solutions will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and retainage with respect to such portion. Neither occupancy nor use shall comprise any waiver by Fountain Valley SD of claims, actions, damages or losses of any kind or degree including, without limitation, defects in the work not actually known to Fountain Valley SD at the time of occupancy or use.

Section 6.02 Substantial Completion. At the time the Work, or any portion thereof, is Substantially Complete in conformance with the Scope of Work and Construction Documents, Chevron Energy Solutions will supply to Fountain Valley SD a written Certificate of Substantial Completion, in a form acceptable to Fountain Valley SD, with respect to such portion of the Work. Fountain Valley SD will, promptly following receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is substantially complete and in substantial conformance with the Scope of Work, final Construction Documents and any Change Orders, and sign and return the Certificate of Substantial Completion to Chevron Energy Solutions. From the date of Substantial Completion Fountain Valley SD will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. When the entirety of the Work is Substantially Complete, Retainage withheld by Fountain Valley SD in relation to the Substantially Completed portion of the Work will be paid as required under California Public Contract Code §7107. Fountain Valley SD agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned. Approval of any Certificate of Substantial Completion shall not comprise any waiver by Fountain Valley SD of claims, actions, damages or losses of any kind or degree including, without limitation, defects in the work not actually known to Fountain Valley SD at the time of approval of the Certificate of Substantial Completion.

Section 6.03 Final Completion. When Chevron Energy Solutions considers the entirety of the Work to be fully complete in accordance with the Scope of Work, Chevron Energy Solutions will give Fountain Valley SD advance notice that the Work is fully complete and ready for final inspection. Administrative DSA closeout will not be a condition to achieving Final Completion. Fountain Valley SD will promptly inspect the Work to verify the status of Final Completion after its receipt of Chevron Energy Solutions' notification that the Work is complete; Fountain Valley SD agrees that such inspection and verification will not be unreasonably withheld, delayed or conditioned. If Fountain Valley SD determines that any Work is incomplete and/or defective, Fountain Valley SD will promptly notify Chevron Energy Solutions in writing of such incomplete and/or defective Work, itemizing and describing such remaining items with reasonable particularity. Chevron Energy Solutions will promptly complete any incomplete items or remedy defective items after which Chevron Energy Solutions will again provide advance notice to Fountain Valley SD that the Work is fully complete. Fountain Valley SD will re-inspect all Work completed or remedied by Chevron Energy

Solutions promptly after Chevron Energy Solutions' notice that the Work is complete; Fountain Valley SD agrees that such inspection and verification will not be unreasonably withheld, delayed or conditioned. When Fountain Valley SD agrees that the Work is fully completed in accordance with the Scope of Work, Fountain Valley SD's Board of Trustees will, at its next meeting, give Chevron Energy Solutions written notice of acceptance of the Work and Final Completion and will promptly issue a Certificate of Final Completion and record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204. Upon Final Completion Fountain Valley SD will pay Chevron Energy Solutions any remaining Contract Amount due and any outstanding Retainage being withheld by Fountain Valley SD, in accordance with Section 8.04. Fountain Valley SD agrees that issuance of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. Approval of Final Completion shall not comprise any waiver by Fountain Valley SD of claims, actions, damages or losses of any kind or degree including, without limitation, defects in the work not actually known to Fountain Valley SD at the time of approval of Final Completion.

**Section 6.04** Transfer of Title; Risk of Loss. Title to all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to Fountain Valley SD upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by Fountain Valley SD and (ii) the date any such items are incorporated into the Project Location. Chevron Energy Solutions will retain care, custody and control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Fountain Valley SD will in no way affect Fountain Valley SD's and Chevron Energy Solutions' rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, Chevron Energy Solutions will have no further obligations or liabilities to Fountain Valley SD arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under ARTICLE 9, and obligations which, pursuant to their terms, survive the termination of this Contract.

**Section 6.05** Division of State Architect. Following Substantial Completion, Chevron Energy Solutions will assist Fountain Valley SD with DSA close-out of approved DSA applications, fulfilling the responsibilities of Chevron Energy Solutions described in Section 2.02(b), by (i) providing reasonable assistance with the preparation and submittal, for DSA review and approval, of any missing or otherwise required Construction Change Documents ("CCDs") to the extent directly related to the Scope of Work, (ii) providing other reasonable assistance to the District in responding to any DSA 90-day letter to the extent directly related to the Scope of Work and (iii) signing (as contractor) form DSA-6-C with respect to the Scope of Work and, to the extent the design professional in responsible charge of the Project, or other design professionals, are subcontractors to Chevron Energy Solutions, requiring such subcontractors to prepare and execute (as design professionals) form DSA-6-AE with respect to the Scope of Work. This obligation will survive Final Completion, final payment for the Work, and the termination of this Contract.

## **ARTICLE 7. SUBCONTRACTORS**

**Section 7.01** Authority to Subcontract. Chevron Energy Solutions may delegate its duties and performance under this Contract, and will have the right to enter into agreements with any subcontractors and other service or material providers as Chevron Energy Solutions will select in its discretion to perform the Work hereunder. Chevron Energy Solutions will not be required to enter into any subcontracts with parties whom Chevron Energy Solutions has not selected or subcontractors whom Chevron Energy Solutions has objection to using.

**Section 7.02** Prompt Payment of Subcontractors. Chevron Energy Solutions will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of the law from arising against any Fountain Valley SD property, against Chevron Energy Solutions' rights to payments hereunder, or against Fountain Valley SD.

**Section 7.03** Responsibility. Chevron Energy Solutions will, at all times, be responsible for the negligent acts, errors and/or omissions of its subcontractors and agents. Nothing in this Contract will constitute any contractual relationship between any others and Fountain Valley SD or any obligation on the part of Fountain Valley SD to pay, or to be responsible for the payment of, any sums to any Chevron Energy Solutions subcontractors.

**Section 7.04** Prevailing Wages.

- (a) All employees of Chevron Energy Solutions and Chevron Energy Solutions' subcontractors performing Work for this Project will be paid no less than the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed, as required by Applicable Laws, including without limitation the sections of the California Labor Code attached hereto as Attachment M. In accordance with California Labor Code §§1773 and 1773.2, Fountain Valley SD has obtained from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work, and has caused copies of such determinations to be kept on file at its principal office and

posted at each Project Location. Fountain Valley SD will promptly notify Chevron Energy Solutions of any changes to any such prevailing wage determination.

- (b) Chevron Energy Solutions and Chevron Energy Solutions' subcontractors performing Work for this Project will also maintain all documentation required by law, including without limitation accurate records showing the name of each worker employed on the Project and the actual hours worked by each worker on each calendar day and during each calendar week, and documentation demonstrating that each of its employees are paid appropriate prevailing wage rates for the classification of Work performed by them under this Contract or related subcontracts. These records will be made available to Fountain Valley SD and the Department of Industrial Relations (or other relevant authority) for inspection and/or audit at all reasonable hours.
- (c) Each invoice submitted by Chevron Energy Solutions to Fountain Valley SD will include certified payroll records for the invoice period, and any other backup information reasonably requested by Fountain Valley SD and/or the Department of Industrial Relations. The certified payroll records will include a verification by Chevron Energy Solutions or Chevron Energy Solutions' subcontractors performing Work for this Project, signed under penalty of perjury, that the information is true and correct and that Chevron Energy Solutions or Chevron Energy Solutions' subcontractors performing Work for this Project have complied with the requirements of California Labor Code §1771 (payment of prevailing wages), §1811 (maximum working hours) and §1815 (overtime) for any Work performed on the Project.
- (d) In addition to (but not in duplication of) any other payments or penalties required for non-compliance with applicable prevailing wage laws and regulations, Chevron Energy Solutions will forfeit an amount determined by the Labor Commissioner: (a) not to exceed two hundred dollars (\$200.00), for each calendar day or portion thereof, for each worker paid (either by Chevron Energy Solutions, or by any lower-tiered subcontractor under it) less than the prevailing rate of per diem wages for the Work provided for in this Contract; and (b) not to exceed one hundred dollars (\$100.00), for each calendar day a certified payroll report is submitted later than the date required by Applicable Law.
- (e) To the extent necessary to comply with Applicable Laws, Chevron Energy Solutions and Chevron Energy Solutions' subcontractors performing Work for this Project will employ registered apprentices in accordance with Applicable Laws. To the extent necessary to comply with Applicable Laws, Chevron Energy Solutions and Chevron Energy Solutions' subcontractors performing Work for this Project will request apprentices from the local apprenticeship program in writing, and will submit to Fountain Valley SD the response from the apprenticeship program.

## **ARTICLE 8. PAYMENTS**

As compensation for the performance of the Work hereunder, Fountain Valley SD will pay the Contract Amount to Chevron Energy Solutions. As compensation for the performance of the Envision Services hereunder, Fountain Valley SD will pay the Annual Envision Fee to Chevron Energy Solutions. As compensation for the Savings Guarantee, the Energy Savings Reports and the performance of the related measurement and verification services hereunder, Fountain Valley SD will pay the Annual M&V Fee to Chevron Energy Solutions. As compensation for the performance of the PM Services hereunder, Fountain Valley SD will pay the Annual Maintenance Fee to Chevron Energy Solutions.

**Section 8.01 Monthly Progress Payments.** Upon execution of this Contract, Chevron Energy Solutions will invoice Fountain Valley SD for a design, engineering and mobilization fee, as detailed on Attachment E. Monthly thereafter, Chevron Energy Solutions will submit to Fountain Valley SD for approval its request, in a form reasonably acceptable to Fountain Valley SD, for a monthly progress payment in respect of the Work. Fountain Valley SD, or their designee, will approve and pay each Request for Payment, less any Retainage described in Section 8.03, within thirty (30) calendar days after its receipt thereof; *provided* that there will be no Retainage with respect to the design, engineering and mobilization fee or any fee related to the Report. A failure to timely approve and pay a Request for Payment hereunder, other than for Retainage or withholding by Fountain Valley SD in accordance with California Public Contract Code §§20104.50 and/or 7107, will be a material default by Fountain Valley SD under this Contract.

**Section 8.02 Materials Stored Off-Site.**

- (a) In addition to the progress payments specified in Section 8.01, Chevron Energy Solutions may invoice Fountain Valley SD for materials and/or equipment purchased in advance and not stored at the Project Location. Each such invoice will be accompanied by proof of off-site material and/or equipment purchases, evidence that the materials and/or equipment have been delivered to a warehouse reasonably acceptable to Fountain Valley SD and evidence of appropriate insurance coverage. Chevron Energy Solutions will furnish to Fountain Valley SD written consent from the Surety approving the advance payment for materials and/or equipment stored off-site. Fountain Valley SD will pre-pay one hundred percent (100%) of Chevron Energy

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Solutions' invoice for the materials and/or equipment delivered, less Retainage as indicated in Section 8.03. Chevron Energy Solutions will protect stored materials and/or equipment from damage.

- (b) Title to materials and/or equipment purchased in advance and not stored at the Project Location shall vest in Fountain Valley SD upon payment therefor. However, responsibility for such materials and/or equipment and risk of loss shall remain with Chevron Energy Solutions until incorporated into the Work and accepted by Fountain Valley SD pursuant to this Contract, and Chevron Energy Solutions shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to Fountain Valley SD or its authorized representative. Fountain Valley SD shall not become responsible for risk of loss or other insurable risk until Substantial Completion of the portion of the Work in which such materials and/or equipment are incorporated.

Section 8.03 Retainage. Fountain Valley SD may withhold a retainage amount ("Retainage") of five percent (5%) of each monthly progress payment in respect of the Work in accordance with California Public Contract Code §7201. Fountain Valley SD may, at its sole and complete discretion, determine whether to make progress payments in full without Retainage at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. In lieu of Retainage being held by Fountain Valley SD, Chevron Energy Solutions may request that securities be substituted or Retainage be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Request for Payment for the Work may be made after Final Completion. Fountain Valley SD, or their designee, will approve and pay the final Request for Payment, subject to any withholding of such amounts as are allowed pursuant to California Public Contract Code §7107, within sixty (60) calendar days after its receipt thereof. The Final Payment amount will also include payment to Chevron Energy Solutions for any remaining Retainage withheld by Fountain Valley SD, less permitted withholding.

Section 8.05 Disputed Invoices/Late Payments.

- (a) Fountain Valley SD may in good faith dispute any Request for Payment, or part thereof, and withhold from any Payment such amounts as are allowed pursuant to California Public Contract Code §§20104.50 and/or 7107. Fountain Valley SD shall, within thirty (30) calendar days after the date the Request for Payment was rendered, pay the undisputed portion and provide Chevron Energy Solutions a written notice and explanation of the basis for any withholding of dispute amount, and the amount being withheld related to the dispute. If any amount disputed by Fountain Valley SD is finally determined to be due to Chevron Energy Solutions, either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 23 below, it will be paid to Chevron Energy Solutions promptly after such final determination, plus Interest from the date billed or claimed until such amount is paid.
- (b) Chevron Energy Solutions shall not be entitled to payment for non-conforming Work performed, so long as any lawful or proper direction concerning that non-conforming Work or any portion thereof given by Fountain Valley SD lacks correction by Chevron Energy Solutions. Fountain Valley SD may withhold from the progress payments one hundred fifty percent (150%) of the estimated value of any amount in dispute between Fountain Valley SD and Chevron Energy Solutions. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. Fountain Valley SD shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a stop payment notice.

Section 8.06 Waiver of Liens. As a precondition for any payment for installation or construction services, Chevron Energy Solutions will provide Fountain Valley SD with progress payment waivers and releases for Work for which Fountain Valley SD has paid up to that date. Upon receipt by Chevron Energy Solutions of final payment for the Work (including payment of all Retainage), Chevron Energy Solutions will provide Fountain Valley SD with a final, unconditional waiver and release. In any event that any lien or stop payment notice is filed or otherwise received by Fountain Valley SD in relation to the Project, Chevron Energy Solutions shall thereafter reimburse Fountain Valley SD all costs and expenses, including actual attorneys' fees, incurred in relation to or arising out of any lien or stop payment notice and, in the event any civil action is initiated in relation to or arising out of any lien or stop payment notice, Chevron Energy Solutions shall defend and indemnify Fountain Valley SD against all costs, expenses, including attorneys' fees, losses, damages and other tangible harm of every kind and degree arising from or related to such action.

Section 8.07 Rebate Programs. Chevron Energy Solutions will assist Fountain Valley SD in the preparation and submission to the applicable agencies of applications and documentation necessary for the energy efficiency rebate, incentive, and/or loan program(s) ("Incentive Funds") shown on Attachment I. Chevron Energy Solutions cannot guarantee that Fountain Valley SD will receive the Incentive Funds or any portion thereof; Chevron Energy Solutions expressly disclaims any liability for Fountain Valley SD's failure to receive any portion of the

Incentive Funds, and Fountain Valley SD acknowledges and agrees that Chevron Energy Solutions will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

**ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY**

Section 9.01 Chevron Energy Solutions warrants to Fountain Valley SD that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. Chevron Energy Solutions further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("Chevron Energy Solutions Warranty").

Section 9.02 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, Chevron Energy Solutions further warrants to Fountain Valley SD, for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use for such Generating Facility, that any additional equipment and materials that are not part of the solar generating systems, as described below, including meters (other than meters that are integrated into any inverter, which are covered under the 10 Year Chevron Energy Solutions Warranty), will be free from degradation in electrical output of more than fifteen per cent (15%) from their originally rated electrical output as a result of faulty installation during such one (1) year warranty period. This Chevron Energy Solutions Warranty expressly excludes any remedy for corrosion or erosion typical for solar photovoltaic systems, or damage directly or indirectly caused by parties other than Chevron Energy Solutions or its subcontractors, but does not exclude damage directly or indirectly caused by Chevron Energy Solutions or its subcontractors in performing any obligation under the Contract including without exception PM Services.

Section 9.03 Pursuant to the requirements of the California Solar Initiative Program, for each Generating Facility, Chevron Energy Solutions warrants to Fountain Valley SD, for a period of ten (10) years from the Substantial Completion Date for such Generating Facility, (i) that such Generating Facility will be free from defects in workmanship provided hereunder; and (ii) that the equipment will be free of defective system or component breakdown, or degradation in electrical output of more than fifteen percent (15%) from its originally rated electrical output as a result of faulty installation (the "10 Year Chevron Energy Solutions Warranty"). This 10 Year Chevron Energy Solutions Warranty covers solely the solar generating system, including PV modules (panels) and inverters (including meters that are integrated into any inverter) associated with the solar generating systems for each Generating Facility, and provides for the no-cost repair or replacement of solar generating system components to the extent not otherwise covered by a manufacturer's warranty. This warranty expressly excludes any remedy for corrosion, erosion, or damage directly or indirectly caused by parties other than Chevron Energy Solutions or its subcontractors, but does not exclude damage directly or indirectly caused by Chevron Energy Solutions or its subcontractors in performing any obligation under the Contract including without exception PM Services.

Section 9.04 Equipment and material warranties that exceed the one (1) year Chevron Energy Solutions Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Fountain Valley SD, after the one (1) year period. During the one (1) year Chevron Energy Solutions Warranty period, Chevron Energy Solutions will be Fountain Valley SD's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Other than for lamps and ballasts, any material defects that are discovered within the one (1) year Chevron Energy Solutions Warranty period, Chevron Energy Solutions, or Chevron Energy Solutions' subcontractors, will correct its defects, and/or Chevron Energy Solutions will work with the equipment or material manufacturer as Fountain Valley SD's agent to facilitate the manufacturer's correction of the equipment or material defect. For typical industry standard lamp and ballast failures during the one (1) year Chevron Energy Solutions Warranty period, Fountain Valley SD will replace such failed lamps/ballasts with replacement stock provided by Chevron Energy Solutions, *provided, however*, that Fountain Valley SD will return the failed lamps/ballasts to the manufacturer in order to ensure that sufficient quantities of replacement stock are available during the one year warranty period. Such warranty services will be performed in a timely manner and at the reasonable convenience of Fountain Valley SD. If a warranty issue arises on any equipment or material installed after the one (1) year Chevron Energy Solutions Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Fountain Valley SD will contact the manufacturer directly to resolve such warranty issues and Fountain Valley SD acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.05 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than Chevron Energy Solutions or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not

performed by an authorized Chevron Energy Solutions subcontractor, improper use or operation, or normal wear and tear under normal usage.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, CHEVRON ENERGY SOLUTIONS MAKES NO OTHER WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. THE REPAIR OR REPLACEMENT OF DEFECTIVE WORK OR EQUIPMENT WILL BE THE SOLE REMEDY OF FOUNTAIN VALLEY SD FOR BREACH OF THE WARRANTIES INDICATED ABOVE.

NOTHING IN THIS ARTICLE SHALL IN ANY WAY LIMIT OR OTHERWISE AFFECT THE SAVINGS GUARANTEE, NOR SHALL THE SAVINGS GUARANTEE LIMIT OR AFFECT THIS CHEVRON ENERGY SOLUTIONS WARRANTY. VIOLATION OF THIS CHEVRON ENERGY SOLUTIONS WARRANTY IS NOT A PREREQUISITE OR REQUIREMENT FOR LIABILITY UNDER THE SAVINGS GUARANTEE.

**ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT**

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided herein, Fountain Valley SD will not, by virtue of this Contract, acquire any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. Chevron Energy Solutions will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work under this Contract, including all intellectual property rights therein.
- (b) License: Solely in connection with the Facilities, Chevron Energy Solutions grants to Fountain Valley SD a limited, perpetual, royalty-free, non-transferrable license for any Chevron Energy Solutions intellectual property rights necessary for Fountain Valley SD to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a result of the Work.
- (c) Ownership and Use of Instruments of Service.
  - (i) Chevron Energy Solutions will be deemed the author of all Work, data, reports, proposals, plans, specifications, flow sheets, drawings, and products of the Work ("Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Fountain Valley SD by Chevron Energy Solutions under this Contract. Chevron Energy Solutions will retain all common law, statutory and other reserved rights, including copyrights, in the Instruments of Service.
  - (ii) Pursuant to California Education Code §17316, the Instruments of Service will be and remain the property of Fountain Valley SD for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project. Any use of the Instruments of Service for other purposes will be at Fountain Valley SD's sole risk and without liability to Chevron Energy Solutions.
  - (iii) If Fountain Valley SD uses the Instruments of Service for implementation purposes, including additions or alterations at the Project Location, or completion of the Project, by employees, agents or contractors other than Chevron Energy Solutions, Fountain Valley SD agrees to waive and release, and indemnify and hold harmless, Chevron Energy Solutions, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

Section 10.02 Ownership of any Existing Equipment. Ownership of any equipment and materials currently existing at the Facilities on the Contract Effective Date will remain the property of Fountain Valley SD even if it is replaced or its operation made unnecessary by work performed by Chevron Energy Solutions pursuant to this Contract. If applicable, Chevron Energy Solutions will advise Fountain Valley SD in writing of all equipment and materials that will be replaced at the Facilities and Fountain Valley SD will promptly designate in writing to Chevron Energy Solutions which replaced equipment and materials should not be disposed of off-site by Chevron Energy Solutions (the "Retained Items"). Fountain Valley SD will be responsible for and designate the location and storage for the Retained Items. Chevron Energy Solutions will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Chevron Energy Solutions will use reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. Chevron Energy Solutions will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work. No equipment to be disposed of off-site by Chevron Energy Solutions shall become property of Chevron Energy Solutions and shall not be sold or otherwise transferred to any third party other than as scrap or refuse.

**ARTICLE 11. INDEMNIFICATION / INSURANCE / BONDS**

Section 11.01 Indemnification by Chevron Energy Solutions. To the furthest extent permitted by California law, Chevron Energy Solutions shall defend, indemnify, and hold harmless Fountain Valley SD, and its agents, representatives, officers, consultants and employees, from any and all third party claims of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage to the extent arising out of, connected with, or resulting from the negligence, or willful misconduct, of Chevron Energy Solutions. This indemnification obligation will survive the termination of this Contract.

Section 11.02 Indemnification by Fountain Valley SD. To the furthest extent permitted by California law, Fountain Valley SD shall defend, indemnify, and hold harmless Chevron Energy Solutions, and its agents, representatives, officers, consultants and employees, from any and all third party claims of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death or property damage to the extent arising out of, connected with, or resulting from the negligence, or willful misconduct, of Fountain Valley SD. This indemnification obligation will survive the termination of this Contract.

Section 11.03 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages only and all other damages and remedies are waived. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, lost profits or business interruption damages, however caused and on any theory of liability provided that third party damages subject to indemnification under this Contract will not be limited by this Section 11.03. "Consequential damages" includes, but is not limited to, operational losses in the performance of business including lost revenues and any increase in operating expense, and any lost profits. It is expressly understood and agreed to by both Parties that each Party's liability to the other will be limited to reimbursement of only those Losses arising solely from a Party's breach of this Contract or negligence, of any degree.

Section 11.04 Chevron Energy Solutions Insurance. Chevron Energy Solutions will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (g) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to Fountain Valley SD via a Self-Administered Claims Letter.

- (a) Workers' Compensation/Employers Liability for states in which Chevron Energy Solutions is not a qualified self-insured. Limits as follows:

*	Workers' Compensation:	Statutory
*	Employers Liability:	Bodily Injury by accident \$1,000,000 each accident Bodily Injury by disease \$1,000,000 each employee Bodily Injury by disease \$1,000,000 policy limit

- (b) Commercial General Liability insurance with limits of:

*	\$1,000,000 each occurrence for Bodily Injury and Property Damage
*	\$2,000,000 General Aggregate – other than Products/Completed Operations
*	\$2,000,000 Products/Completed Operations Aggregate
*	\$1,000,000 Personal & Advertising Injury
*	\$ 100,000 Damage to premises rented to Chevron Energy Solutions

Coverage to be written on a claims made form. Coverage to be at least as broad as ISO form CG 0002 (12/07), without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest, (2) explosion, collapse, underground hazard.

- (c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

- (d) Professional Liability insurance with limits of:

*	\$1,000,000 per occurrence
*	\$1,000,000 aggregate

Coverage to be written on a claims-made form.

- (e) Excess Liability insurance. Limits as follows:

*	\$1,000,000 each occurrence
*	\$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- \* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Fountain Valley SD, but only to the extent of the indemnity obligations contained in this Contract.
- \* The insurance provided for Commercial General Liability and Auto Liability above will:
  - (i) include Fountain Valley SD as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
  - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

- (g) In lieu of any insurances required in this Section 11.04, Chevron Energy Solutions may self-insure hereunder and use a Self-Administered Claims Program for this purpose. Chevron Energy Solutions will notify Fountain Valley SD in writing thirty (30) days prior to cancellation of the Self-Administered Claims Program.

Section 11.05 Performance and Payment Bonds. Prior to commencing Work under this Contract, Chevron Energy Solutions will furnish a performance bond in the form of Attachment A in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond in the form of Attachment B to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds are not being furnished to cover the performance of any Professional Services or any energy guaranty or guaranteed savings under this Contract.

**ARTICLE 12. CONFLICTS OF INTEREST**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither Party nor any director, employee or agent of any Party will give to or receive from any director, employee or agent of any other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither Party nor any director, employee or agent of any Party, will without prior notification thereof to all Parties enter into any business relationship with any director, employee or agent of another Party or of any Affiliate of another Party, unless such person is acting for and on behalf of the other Party or any such Affiliate. A Party will promptly notify the other Parties of any violation of this ARTICLE 12 and any consideration received as a result of such violation will be paid over or credited to the Party against whom it was charged. Any representative of any Party, authorized by that Party, may audit the records of the other Parties related to this Contract, including the expense records of the Party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this ARTICLE 12.

**ARTICLE 13. CREDIT**

Prior to the commencement of the Work, Fountain Valley SD shall provide Chevron Energy Solutions proof that financial arrangements have been made to fulfill Fountain Valley SD's obligations under this Contract. Fountain Valley SD's requirement to furnish such proof to Chevron Energy Solutions is a condition precedent to commencement of the Work. After commencement of the Work, Chevron Energy Solutions may request such proof if (1) Fountain Valley SD fails to make payments to Chevron Energy Solutions as this Contract requires; (2) a change in the Work materially changes the Contract Amount; or (3) Chevron Energy Solutions has other reasonable concerns regarding Fountain Valley SD's ability to fulfill its payment obligations under this Contract when due. Fountain Valley SD shall furnish such proof as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After Fountain Valley SD furnishes any such proof, Fountain Valley SD shall not materially vary such financial arrangements without prior consent of Chevron Energy Solutions. If Fountain Valley SD fails to provide Chevron Energy Solutions with such proof within ten (10) days of receiving a demand from Chevron Energy Solutions, Chevron Energy Solutions shall be entitled to suspend its performance under this Contract until such proof is received.

**ARTICLE 14. CREDITS; TAX BENEFITS**

Section 14.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines. Fountain Valley SD hereby assigns and transfers to Chevron Energy Solutions, and

its Affiliates and assigns, solely for purposes of the Energy Policy Act of 1992, any Greenhouse Gas emission reduction credits that result from the Work.

Section 14.02 As authorized by §1331 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) Fountain Valley SD agrees that for the Work, Chevron Energy Solutions will be the “designer” as that term is identified in Internal Revenue Bulletin 2008-14, Notice 2008-40, and Chevron Energy Solutions will have the exclusive right to report to any federal, state, or local agency, authority or other party any tax benefit associated with the Work. Upon Final Completion, Fountain Valley SD agrees to execute a written allocation including a declaration related to Internal Revenue Code §179D. Chevron Energy Solutions will prepare the declaration and all accompanying documentation. Chevron Energy Solutions will be designated the §179D beneficiary.

Section 14.03 Other than those credits described in Section 14.01 and Section 14.02, Fountain Valley SD shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the Generating Facilities and each of its component parts. This ownership includes the production, sale, purchase or use of the energy output including, without limitation:

- (a) All Environmental Incentives associated in any way with the Generating Facilities. “Environmental Incentives” means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the foregoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and the right to claim federal income tax credits under Internal Revenue Code §45 or §48 as such credits are available arising from the environmental attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.
- (b) All rights and interests in performance based incentive payments to be made under the California Solar Initiative.
- (c) All reporting rights and the exclusive rights to claim responsibility for the delivery of the energy from the Generating Facilities.
- (d) All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.
- (e) All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.
- (f) All “renewable energy credits,” as such term is defined in California Public Utilities Code §399.12(h)(2), associated with the Generating Facilities.
- (g) The proceeds of any and all other incentive programs available in relation to the Generating Facilities.

**ARTICLE 15. AMERICAN RECOVERY AND REINVESTMENT ACT**

In the event Fountain Valley SD is using American Recovery and Reinvestment Act (“ARRA”) funding, in whole or in part, to pay for the Scope of Work set forth in this Contract, Fountain Valley SD acknowledges and agrees that the supplies and services hereunder are being procured and purchased under state or local procurement laws and Chevron Energy Solutions is a “vendor” or “contractor” hereunder. As such, Fountain Valley SD agrees that Chevron Energy Solutions is not a recipient, grantee, awardee, subrecipient, subgrantee or subawardee of ARRA funds hereunder. In the event that after Contract execution the awarding agency or a court of proper jurisdiction determines that Chevron Energy Solutions is a recipient, grantee, awardee, subrecipient, subgrantee or subawardee under the ARRA funded grant rather than a “vendor” or “contractor”, Chevron Energy Solutions reserves the right to terminate this Contract at its discretion pursuant to the termination for convenience provision set forth in this Contract. Fountain Valley SD agrees to release, defend, indemnify, and hold Chevron Energy Solutions harmless from and against any claims, costs, or damages arising out of or related to such a determination notwithstanding any other provisions in this Contract.

**ARTICLE 16. TRADE SECRETS**

If any materials or information provided by Chevron Energy Solutions to Fountain Valley SD under this Contract are designated by Chevron Energy Solutions as a “trade secret” or otherwise designated by Chevron Energy Solutions as

exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the “Act”) and in the event a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than five (5) calendar days) after receipt of such request, Fountain Valley SD will notify Chevron Energy Solutions of such request and advise Chevron Energy Solutions whether Fountain Valley SD believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Promptly after a third party’s request for disclosure of materials under the Act, Chevron Energy Solutions will (i) authorize Fountain Valley SD to release the documents or information sought; or (ii) if Chevron Energy Solutions reasonably believes that the information is exempt from disclosure, advise Fountain Valley SD not to release the materials. In the event that Chevron Energy Solutions advises Fountain Valley SD not to release the materials, Chevron Energy Solutions agrees to release, defend, indemnify, and hold Fountain Valley SD harmless from and against any claims, costs, or damages arising out of or related to such withholding of documents upon such advice.

**ARTICLE 17. DATA PRIVACY**

Chevron Energy Solutions and Fountain Valley SD agree that it is not anticipated that any personal data will be processed by Fountain Valley SD on behalf of Chevron Energy Solutions under or as a result of this Contract (other than as contained within the terms of the Contract). If Fountain Valley SD begins to process personal data on behalf of Chevron Energy Solutions, Fountain Valley SD will immediately notify Chevron Energy Solutions and the Parties will incorporate appropriate data protection provisions into this Contract.

**ARTICLE 18. EXPORT CONTROL; PROHIBITED PARTIES**

Section 18.01 The Parties understand and acknowledge that confidential information exchanged under this Contract may be subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data. The Parties agree to comply with all such laws, regulations, and orders, including, if applicable, all requirements of the International Traffic in Arms regulations and/or the Export Administration Act, as may be amended. Each Party further agrees to comply with any export license requirements that govern the export, re-export, transfer, or release of confidential information provided hereunder. Each Party agrees to provide an Export Control Classification Number (ECCN) or USML Classification Number to the receiving Party in writing for all confidential information that is classified with an Export Control Classification Number (ECCN) other than EAR99 or is classified on the USML. The ECCN and USML Classification, if required will be provided at the time the confidential information is provided to the receiving Party. If a disclosing Party provides confidential information subject to the terms of an export license or other export authorization, the disclosing Party will notify the receiving Party in writing of any restrictions on the use, transfer, distribution, or re-export of the confidential information contained in said export license or authorization. Chevron Energy Solutions and its Affiliates will not be obligated to perform any obligations hereunder if and to the extent that any such performance is prohibited by or contrary to any applicable U.S. laws or regulations, including U.S. export regulations. An entity is deemed to “control” another if it owns directly or indirectly at least fifty percent of either of the shares entitled to vote at a general election of directors of such other entity or the voting interest in such other entity if such entity does not have either shares or directors.

Section 18.02 Chevron Energy Solutions is a United States company with a policy requiring it to comply with all applicable laws, including economic sanctions and trade restrictions imposed by the United States government. Chevron Energy Solutions has undertaken to provide its parent organization with any information relevant to its potential involvement with any party that may be the target of such sanctions and restrictions. Accordingly, Fountain Valley SD will provide Chevron Energy Solutions with ninety (90) days advance notice of the names and addresses of any member of Fountain Valley SD’s organization which may be any of the following:

- (a) The target of, or owned or subject to control by any country, institution, organization, entity or person that is the target of, economic sanctions and trade restrictions imposed by the United States government.
- (b) Debarred or otherwise excluded or declared ineligible to participate in United States government contracts or contracts, grants or other programs financed in whole or in part by the United States government.
- (c) Listed by the United States Departments of Commerce or State as an entity with which United States persons may not engage in export or re-export related transactions.

**ARTICLE 19. EVENTS OF DEFAULT**

Section 19.01 Events of Default by Fountain Valley SD. Each of the following events or conditions will constitute an “Event of Default” by Fountain Valley SD:

- (i) any failure by Fountain Valley SD to perform or comply with this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Fountain Valley SD demanding that such failure to perform be cured; *provided* that (y) such

failure to perform will not be deemed a default hereunder if it is due to an event of Force Majeure pursuant to ARTICLE 21; and (z) if such cure cannot be effected in thirty (30) calendar days, Fountain Valley SD will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or

- (ii) any representation or warranty furnished by Fountain Valley SD in this Contract which was intentionally false or misleading in any material respect when made; or
- (iii) any failure by Fountain Valley SD to pay any amount to Chevron Energy Solutions which is not paid promptly after written notice from Chevron Energy Solutions that the amount is past due.

Section 19.02 Events of Default by Chevron Energy Solutions. Each of the following events or conditions will constitute an "Event of Default" by Chevron Energy Solutions:

- (i) any failure by Chevron Energy Solutions to perform or comply with this Contract, including breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to Chevron Energy Solutions demanding that such failure to perform be cured; *provided* that (i) such failure to perform will not be deemed a default hereunder if it is due to an event of Force Majeure pursuant to ARTICLE 21, and (ii) if such cure cannot be effected in thirty (30) calendar days, Chevron Energy Solutions will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by Chevron Energy Solutions in this Contract which was intentionally false or misleading in any material respect when made.

## **ARTICLE 20. REMEDIES UPON DEFAULT**

Section 20.01 Remedies upon Default by Fountain Valley SD. If an Event of Default by Fountain Valley SD occurs, Chevron Energy Solutions will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 23 including, without limitation, terminating this Contract or recovering amounts due and unpaid by Fountain Valley SD, and/or damages, to the extent such damages cannot reasonably be mitigated, which will include Chevron Energy Solutions' actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been on or before the date of the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses (other than attorneys' fees and expenses) reasonably incurred in exercising the foregoing remedies.

Section 20.02 Remedies Upon Default by Chevron Energy Solutions. If an Event of Default by Chevron Energy Solutions occurs, Fountain Valley SD will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 23, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by Chevron Energy Solutions and/or damages, to the extent such damages cannot reasonably be mitigated, , which will include Fountain Valley SD's actual, direct out-of-pocket losses incurred by reason of such Event of Default and any cost of funding; loss of anticipated payment obligations; legal fees and arbitration costs; and any payment or delivery required to have been paid on or before the date of the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract, including the liquidation value of the remaining term of the Savings Guarantee, less the liquidation value of fees for the Professional Services hereunder, and all costs and expenses (other than attorneys' fees and expenses) reasonably incurred in exercising the foregoing remedies.

## **ARTICLE 21. CONDITIONS BEYOND CONTROL OF THE PARTIES**

Section 21.01 Force Majeure Events. In the event that any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any event of Force Majeure, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to any other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an event of Force Majeure.

Section 21.02 Utility Work. Fountain Valley SD expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by the local electric Utility ("Utility") in order for Chevron Energy Solutions to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility.

Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

Section 21.03 Governmental Oversight. Subject to Chevron Energy Solutions' right to obtain a Change Order for Excusable Delay pursuant to Section 5.04, Chevron Energy Solutions expressly understands and agrees that the definition "Force Majeure" above also includes any delay in any act to be undertaken by Fountain Valley SD that may require or be subject to approval by any Governmental Authority (other than the Board of Trustees of Fountain Valley School District), or which requires prior proceedings in order to lawfully proceed in accordance with Applicable Laws.

**ARTICLE 22. ENERGY SAVINGS**

Section 22.01 Guaranteed Savings.

- (a) Savings Guarantee. In consideration of the payment of the Annual M&V Fee, and upon the terms and subject to the conditions set forth herein, Chevron Energy Solutions warrants that Fountain Valley SD will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the "Savings Guarantee"), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- (b) Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, Chevron Energy Solutions will pay to Fountain Valley SD, promptly after the acceptance by Fountain Valley SD of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- (c) Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Fountain Valley SD, Fountain Valley SD would benefit from additional energy services or energy saving retrofits, Fountain Valley SD and Chevron Energy Solutions may mutually agree that Chevron Energy Solutions will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- (d) Force Majeure. In the event that Chevron Energy Solutions is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any event of Force Majeure, such circumstance will not constitute a default, and Chevron Energy Solutions will be excused from performance under this ARTICLE 22 while such event of Force Majeure is continuing. During such Force Majeure event, Projected Energy Savings for the month(s) in which such Force Majeure is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

Section 22.02 Changes in Energy Use Factors.

- (a) Adjustments to Baselines. Fountain Valley SD will promptly notify Chevron Energy Solutions in writing of any change in any Energy Use Factor. In addition, data collected by Chevron Energy Solutions during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. Chevron Energy Solutions will determine the effect that any such change will have on EC Savings and present to Fountain Valley SD a written analysis of the effects of such changes. Chevron Energy Solutions will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- (b) Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. Chevron Energy Solutions will notify Fountain Valley SD, in writing, of all such changes.
- (c) Changes to Facilities. Fountain Valley SD or Chevron Energy Solutions may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing Force Majeure events. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Section 22.02(c).
- (d) Unilateral Baseline Adjustment. If Chevron Energy Solutions proposes changes to the Facilities that would not unreasonably interfere with the conduct of Fountain Valley SD's business or cause Fountain Valley SD to incur additional costs, and Fountain Valley SD does not consent to the changes, then Chevron Energy Solutions will adjust the Baselines upward by the amount of savings projected from the changes.
- (e) Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work,

Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by Chevron Energy Solutions.

- (f) Assessment Work. Chevron Energy Solutions has the right to charge Fountain Valley SD for Assessment Work, which will be billed at current Chevron Energy Solutions engineering rates and will be paid by Fountain Valley SD promptly after receiving Chevron Energy Solutions' invoice. Before initiating Assessment Work, Chevron Energy Solutions will notify Fountain Valley SD in writing of the intent and estimated cost associated with the Assessment Work. Fountain Valley SD will promptly give Chevron Energy Solutions written permission to proceed or, alternatively at no charge to Chevron Energy Solutions, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. Pending the receipt by Chevron Energy Solutions of such written notice, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Fountain Valley SD approves the Assessment Work.
- (g) Changes in Energy Use Factors. If Fountain Valley SD fails to notify Chevron Energy Solutions of changes in Energy Use Factors or fails to supply Chevron Energy Solutions in a timely manner with information that is requested by Chevron Energy Solutions for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.
- (h) Changes in Savings Calculations. Any changes made by Chevron Energy Solutions to the savings calculations will be presented to Fountain Valley SD in advance.
- (i) Inspection of Facilities. Fountain Valley SD agrees that Chevron Energy Solutions will have the right, with or without prior notice, to inspect the Facilities to determine if Fountain Valley SD has consistently complied with its obligations as set forth above. In the event that any inspection discloses that Fountain Valley SD has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.

Section 22.03 Fountain Valley SD Maintenance.

- (a) Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Fountain Valley SD will maintain such portion of the Work, and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by Chevron Energy Solutions and by the manufacturers of the relevant equipment.
- (b) Fountain Valley SD will not cause, and will take all reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Fountain Valley SD will promptly notify Chevron Energy Solutions. In the event an unforeseeable overshadowing or shading condition not caused by Chevron Energy Solutions or its subcontractors exists and continues for five (5) calendar days or more, Fountain Valley SD agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and Chevron Energy Solutions will present Fountain Valley SD with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

Section 22.04 Energy Savings Report. Annually during the Energy Savings Term, Chevron Energy Solutions will submit to Fountain Valley SD an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Savings Report"). Chevron Energy Solutions will use its reasonable efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Fountain Valley SD will be notified of such a situation within the ninety (90) calendar-day period.

Section 22.05 On-Site Measurements. Fountain Valley SD irrevocably grants to Chevron Energy Solutions the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. Chevron Energy Solutions will not exercise such right in a manner that unreasonably interferes with the business of Fountain Valley SD as conducted at the Facilities as of the date hereof. Fountain Valley SD will cooperate fully with the exercise of such right by Chevron Energy Solutions pursuant to this Section 22.05. Fountain Valley SD will further cooperate with Chevron Energy Solutions' performance of the Savings Measurement and Verification Plan by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by Chevron Energy Solutions.

Section 22.06 Internet Communication Path. At Chevron Energy Solutions' request, to facilitate Chevron Energy Solutions' monitoring of the Work, Fountain Valley SD will permit Chevron Energy Solutions and reasonably cooperate with Chevron Energy Solutions' efforts to open an internet communication path between Fountain Valley SD's energy management system(s) and Chevron Energy Solutions' office in Overland Park, Kansas. Fountain Valley SD will provide, at Fountain Valley SD's expense, all networking, telecommunication, encryption, and security hardware and/or software necessary to satisfy Fountain Valley SD's requirements for achieving such communication path, as well as any similar hardware, software, or encryption devices necessary for use at Chevron Energy Solutions' office. Chevron Energy Solutions will provide Fountain Valley SD with the precise locations for network communication ports within Fountain Valley SD's Facilities. Fountain Valley SD agrees not to charge Chevron Energy Solutions to install or maintain such communication paths.

Section 22.07 Termination of Guaranteed Savings. If (i) Fountain Valley SD notifies Chevron Energy Solutions in writing of its intent to terminate the Savings Guarantee, (ii) this Contract is terminated by Chevron Energy Solutions for default by Fountain Valley SD or by Fountain Valley SD for any reason permitted by this Contract or (iii) Fountain Valley SD fails to maintain the Project in accordance with Section 22.03 or is in default of any of its other obligations under this ARTICLE 22, the obligation of Chevron Energy Solutions to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, Chevron Energy Solutions will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

Section 22.08 Annual M&V Fee.

- (a) Invoicing and Payment. The Annual M&V Fee for the first Measurement Period will be invoiced by Chevron Energy Solutions to Fountain Valley SD in a lump sum on the M&V Commencement Date. All subsequent Annual M&V Fees will be invoiced by Chevron Energy Solutions on the first day of the corresponding Measurement Period. Fountain Valley SD, or its designee, will pay Chevron Energy Solutions such Annual M&V Fee, without any retention amount withheld, promptly after its receipt of the corresponding invoice. Unless Fountain Valley SD gives Chevron Energy Solutions prior written notice of its intent to terminate the Savings Guarantee, any failure to timely pay the Annual M&V Fee in accordance with this Section 22.08(a) will be a material default by Fountain Valley SD under this Contract, and Chevron Energy Solutions, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to make Guarantee Payments.
- (b) Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.
- (c) Not Refundable. The Annual M&V Fee is not refundable for any reason.

Section 22.09 Calculations.

- (a) Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- (b) Calculation of EC Savings. EC Savings for any Measurement Period will be equal to, for such Measurement Period, of the Energy Use Savings, as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- (c) Calculation of Energy Use Savings. Energy Use Savings will be calculated by Chevron Energy Solutions as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- (d) Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by Chevron Energy Solutions as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by Chevron Energy Solutions in the manner set forth in the Savings Measurement and Verification Plan. For the avoidance of doubt, Excess Savings will not be reduced below zero.
- (e) Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by Chevron Energy Solutions as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

**ARTICLE 23. DISPUTE RESOLUTION**

Section 23.01 Dispute Resolution. In the event of a dispute, claim, or controversy (“Dispute”) arising out of or in connection with this Contract, the Parties will confer and attempt to resolve the matter informally. If such Dispute cannot be promptly resolved in this manner, then the Dispute will be settled by arbitration administered by the American Arbitration Association (“AAA”) under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration will be heard by one arbitrator, who will have experience in the general subject matter to which the Dispute relates, including, without limitation, public works construction. Notwithstanding anything herein to the contrary, once a written request for arbitration has been made, each party shall have the right to conduct discovery pursuant to the procedures set forth in the Civil Discovery Act, as amended, even if no civil action has been filed. The arbitrator shall conform all rulings and any award to California law and any ruling or award shall be subject to judicial review. The arbitration will take place at the AAA office geographically closest to the site where the Work has been performed.

Section 23.02 Attorneys’ Fees. In any action or proceeding undertaken in relation to or arising from this Contract, the Parties shall each bear their own attorneys’ fees, costs and expenses.

**ARTICLE 24. REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

**ARTICLE 25. ASSIGNMENT**

Section 25.01 Except as provided in this ARTICLE 25, this Contract may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause will be void and unenforceable.

Section 25.02 Assignment by Chevron Energy Solutions. Chevron Energy Solutions may assign this Contract and all related contracts, subject to the consent of Fountain Valley SD, which consent shall not unreasonably be withheld, delayed or conditioned, to any of the following entities possessing equivalent competence and financial capacity to Chevron Energy Solutions in relation to complete performance of all executory obligations of Chevron Energy Services under this Contract: (i) an Affiliate; (ii) an entity that is controlled by, controls, or is under common control with Chevron Energy Solutions; or (iii) any entity taking such assignment pursuant to a merger, consolidation, transfer of substantially all Chevron Energy Solutions’ assets, or by operation of law. Chevron Energy Solutions may also assign this Contract, subject to the consent of Fountain Valley SD, which consent shall not unreasonably be withheld, delayed or conditioned, if Fountain Valley SD has been provided with reasonable proof that the proposed assignee (i) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Project and providing services comparable to those contemplated by this Contract; and (ii) has the financial capability to provide the services contemplated by this Contract in the manner required by this Contract. Chevron Energy Solutions may also assign its rights, but not its obligations, under this Contract and all related contracts without the consent of Fountain Valley SD to (x) a lender providing financing to Chevron Energy Solutions, or (y) a special purpose entity that is an Affiliate of or is controlled by such lender.

Section 25.03 Assignment by Fountain Valley SD. Fountain Valley SD may assign this Contract in whole or in part to the extent of a school district reorganization pursuant to California Education Code §§35500 *et seq.* or 35700 *et seq.* that results in transfer of any one or more of the Facilities to another public school district.

Section 25.04 Assignment of Anti-Trust Claims. Chevron Energy Solutions agrees to assign, and to cause its subcontractor(s) to assign, to Fountain Valley SD all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment shall be made and become effective at the time Fountain Valley SD tenders final payment to Chevron Energy Solutions, without further acknowledgment by the Parties.

## **ARTICLE 26. TERMINATION**

Section 26.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, pursuant to the provisions of ARTICLE 12 unless such Event of Default has been cured within the applicable time periods for a cure set forth in such ARTICLE 12 in addition to the remedies provided for in ARTICLE 20 the non-defaulting Party may terminate this Contract by providing three (3) Business Days' notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection herewith. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, Chevron Energy Solutions will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 26.02 Mutual Termination for Convenience. Both Chevron Energy Solutions and Fountain Valley SD have the right to terminate this Contract upon mutual written agreement by both Parties hereto. If this Contract is terminated pursuant to this Section 26.02, Chevron Energy Solutions will be entitled to payment for all Work performed, plus earned profit and overhead, other costs actually incurred in accordance with this Contract up to the date of termination, and costs (including de-mobilization expenses and re-stocking charges) reasonably anticipated to be incurred as a result of such termination for convenience.

### Section 26.03 Termination by Fountain Valley SD.

- (a) Fountain Valley SD shall have the right to terminate this Contract for any reason or no reason, at all, including, without limitation, its convenience, effective immediately upon written notice to Chevron Energy Solutions. Fountain Valley SD shall provide Chevron Energy Solutions with written notice of termination and its effective date. Upon receipt of such notice, the Chevron Energy Solutions shall, unless the notice requires otherwise: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders for materials, services or facilities, other than as may be necessary or required for completion of such portion of the Work that is not terminated; (iii) promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Fountain Valley SD of all orders and subcontracts to the extent they relate to the performance of the Work terminated or assign to Fountain Valley SD those orders and subcontracts and revoke agreements specified in such notice; (iv) assist Fountain Valley SD as specifically requested in writing in the maintenance, protection and disposition of property acquired by Fountain Valley SD in connection with this Project; and (v) deliver to Fountain Valley SD or dispose of, as Fountain Valley SD may direct, all materials, supplies or work-in-process or raw materials related to this Project.
- (b) Fountain Valley SD shall pay Chevron Energy Solutions for all Work performed up to the effective date of termination including but not limited to: fully burdened labor costs; subcontractor services performed; materials and equipment procured (including shipping and applicable taxes); equipment and materials installed; earned profit and overhead for Chevron Energy Solutions and its subcontractors; and any equipment cancellation and/or restocking fees ("Cancellation Costs").
- (c) Chevron Energy Solutions shall, as soon as practical after receiving a notice of termination for convenience under Section 26.03(a), submit to Fountain Valley SD a statement showing the Cancellation Costs incurred by Chevron Energy Solutions in the performance of the Work terminated pursuant to this Section 26.03. Fountain Valley SD shall, within thirty (30) days after receipt of such statement, pay to Chevron Energy Solutions all amounts properly included thereon, including but not limited to the following subcontractor, vendor and supplier costs:
  - (i) Subcontract termination costs;
  - (ii) Cancellation fees in regard to equipment and materials ordered;
  - (iii) Cost of all materials and equipment ordered which cannot be canceled, less actual proceeds received upon the disposition thereof;

- (iv) Restocking fees in regard to materials ordered;
  - (v) Overhead and loss of profit of subcontractors and suppliers for Work completed as of the date of termination;
  - (vi) Field work accomplished;
  - (vii) Permit, engineering bond, and inspection fees; and
  - (viii) All other direct costs actually incurred by Chevron Energy Solutions which can be demonstrated by invoice, canceled check, or other appropriate documentation.
- (d) Upon payment by Fountain Valley SD of the Cancellation Costs, Chevron Energy Solutions shall transfer to Fountain Valley SD title to all materials, equipment and other property included or ordered for the terminated Work, the cost of which was included in Chevron Energy Solutions' termination statement.

**ARTICLE 27. NOTICE**

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

**TO CHEVRON ENERGY SOLUTIONS:**

Chevron Energy Solutions Company  
145 S. State College Blvd.  
Brea, CA 92821  
Attention: Curtis D. Campbell, Project Manager

**With a COPY TO:**

Legal Department  
Chevron Energy Solutions Company  
345 California Street, 18<sup>th</sup> Floor  
San Francisco, CA 94104-2624  
Tel: 415-733-4500  
Fax: 415-733-4957  
Attention: Contract Administrator

**TO FOUNTAIN VALLEY SD:**

Fountain Valley School District  
10055 Slater Ave.  
Fountain Valley, CA 92708  
Tel: 714-843-3250  
Fax: 714-843-3252  
Attention: Steven L. McMahon

**ARTICLE 28. CONSTRUCTION OF CONTRACT**

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in the manner that most accurately reflects the intent of the Parties when such Contract was executed in accordance with California law. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate. In any event of a conflict between provisions in the Contract and any Attachment, the provisions in the body of the Contract shall supersede and control the rights and obligations of the Parties.

**ARTICLE 29. BINDING EFFECT**

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE 30. NO WAIVER**

The failure of Chevron Energy Solutions or Fountain Valley SD to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the

same in accordance with this Contract in the event of a continuing or subsequent default on the part of Chevron Energy Solutions or Fountain Valley SD.

**ARTICLE 31. SEVERABILITY**

In the event that any clause or provision of this Contract or any part thereof becomes or will be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided* that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.

**ARTICLE 32. APPLICABLE LAW**

This Contract and the construction and enforceability thereof will be interpreted under the laws of the State of California. The Parties consent to personal jurisdiction and venue of the State and Federal Courts within the City and County of San Francisco, California and, by execution and delivery of this Contract, each of the Parties hereby (i) accepts the jurisdiction of the foregoing courts for purposes of enforcement of any such arbitral award and (ii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venues of any suit, action or proceedings with respect hereto brought in any such court, and further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum.

**ARTICLE 33. HEADINGS**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

**ARTICLE 34. COUNTERPARTS; INTEGRATION**

This Contract may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Contract by email or fax will be effective as delivery of a manually executed counterpart of this Contract.

**Energy Services Contract  
Fountain Valley SD and Chevron Energy Solutions**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date first above written.

**CHEVRON ENERGY SOLUTIONS:**  
Chevron Energy Solutions Company,  
a Division of Chevron U.S.A. Inc.

**FOUNTAIN VALLEY SD:**  
Fountain Valley School District

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

DRAFT

ATTACHMENT A  
FORM OF PERFORMANCE BOND

**PERFORMANCE BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, FOUNTAIN VALLEY SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to CHEVRON ENERGY SOLUTIONS COMPANY, a division of Chevron U.S.A. Inc. (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: Fountain Valley Energy Conservation Project (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated \_\_\_\_\_, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, WE, CHEVRON ENERGY SOLUTIONS, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto Obligee in the sum being not less than one hundred percent (100%) of the Contract Amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or *pro tanto*) by any change, extension of time, alteration in or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the Contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or *pro tanto*) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Contractor. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent

contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal for Work under the Contract, including, without limitation, all obligations with respect to warranties. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee for Work performed under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the Work in the event of default by the Principal.

No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety shall remain responsible for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

PRINCIPAL/CONTRACTOR:

By:

SURETY:

By:  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged: \$\_\_\_\_\_ (This must be filled in by a corporate surety).

DRAFT

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)	(Name and Address of agent or representative for service for service of process in California)
_____	_____
_____	_____
Telephone: _____	Telephone: _____

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State  Commission expires: _____	(SEAL)
--	--------

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

ATTACHMENT B  
FORM OF PAYMENT BOND

**LABOR AND MATERIAL PAYMENT BOND**

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Bond No.:

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

---

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, FOUNTAIN VALLEY SCHOOL DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to CHEVRON ENERGY SOLUTIONS COMPANY, a division of Chevron U.S.A. Inc. (hereinafter designated as the "Principal" or "Contractor"), an agreement (hereinafter the "Contract") for the work described as follows: Fountain Valley Energy Conservation Project (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 9550;

NOW, THEREFORE, we, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto Obligee and to any and all persons, companies, or corporations entitled by law to file stop payment notices or make a claim on this bond under California Civil Code Section 9100, in the sum being not less than one hundred percent (100%) of the Contract Amount payable by said Obligee under the terms of said Contract, for which payment shall well and truly be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons described in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the Public Work contracted to be done, or for any work or labor thereon of any kind; or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind; then, said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Sections 9554 and 9564.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any

conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

PRINCIPAL/CONTRACTOR:

By:

SURETY:

By:  
Attorney-in-Fact

DRAFT

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)	(Name and Address of agent or representative for service for service of process in California)
_____	_____
_____	_____
Telephone: _____	Telephone: _____

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (Surety) and acknowledged to me that he/she/they subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-in-Fact on the executed instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State  Commission expires: _____	(SEAL)
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NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

**ATTACHMENT C  
FOUNTAIN VALLEY SD'S FACILITIES & EXISTING EQUIPMENT**

(a) The following Fountain Valley SD Facilities are included under the Scope of Work listed below:

Facility	Location	Square Feet (1)
Roch Courreges Elementary School	18313 Santa Carlotta Ave Fountain Valley, CA 92708	47,670
James H. Cox Elementary School	17615 Los Jardines East Fountain Valley, CA 92708	54,185
Harry C. Fulton Middle School	8787 El Lago St. Fountain Valley, CA 92708	49,535
Robert Gisler Elementary School	18720 Las Flores St. Fountain Valley, CA 92708	45,545
Kazuo Masuda Middle School	17415 Los Jardines West Fountain Valley, CA 92708	49,675
William T. Newland Elementary School	8787 Dolphin Dr. Fountain Valley, CA 92708	49,287
Isojiro Oka Elementary School	9800 Yorktown Ave. Fountain Valley, CA 92708	45,305
Urbain H. Plavan Elementary School	9675 Warner Ave. Fountain Valley, CA 92708	48,308
Samuel E. Talbert Middle School	9101 Brabham Dr. Fountain Valley, CA 92708	52,354
Hisamatsu Tamura Elementary School	17340 Santa Suzanne Fountain Valley, CA 92708	44,346
FVSD District Office	10055 Slater Ave. Fountain Valley, CA 92708	25,526
FVSD Maintenance & Operations	17330 Mount Herrmann St. Fountain Valley, CA 92708	19,589

Notes:

- (1) Campus/facility areas as provided by Fountain Valley SD.
- (b) The existing equipment is that which is listed in Chevron Energy Solutions' PDA Technical Document Report dated February 2013.

**ATTACHMENT D  
SCOPE OF WORK**

California State Contractor's License Number 813797

Energy Conservation Measures to Be Implemented

Site No.	Campus / Facility	ECM RE-01 On-Site Solar PV System	ECM L-01 Lighting Retrofit & Upgrade	ECM DL-01 Daylighting Technology	ECM M-01 Replace Portable Classroom A/C Units	ECMs M-02 & 03 HVAC Upgrades	ECMs DDC-01, 02 & 03 Web-Based Control System	ECM MAINT- 01 Portable Classroom Gutters
1	Courreges Elementary School	X	X		X		X	X
2	Cox Elementary School	X	X		X		X	X
3	Fulton Middle School	X	X	X	X		X	X
4	Gisler Elementary School	X	X		X		X	X
5	Masuda Middle School	X	X	X	X		X	X
6	Newland Elementary School	X	X		X		X	X
7	Oka Elementary School	X	X		X		X	X
8	Plavan Elementary School	X	X	X	X	X	X	X
9	Talbert Middle School	X	X	X	X		X	X
10	Tamura Elementary School	X	X		X		X	X
11	District Office		X				X	
12	Maintenance & Operations		X					

**General Project Scope and Clarifications/Exclusions, all ECM's:**

- Chevron Energy Solutions has assumed project construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize resources due to schedule interruptions.
- Chevron Energy Solutions will require the assistance of Fountain Valley SD personnel to secure the area and to provide traffic redirection during rigging operations and during the move-in and move-out of large equipment.
- System startup, testing, commissioning, and training on PV systems and HVAC control systems provided under this Contract are included.
- Temporary utilities needed by Chevron Energy Solutions to construct this project will be provided by Fountain Valley SD at no cost (e.g., trailer power, phone lines, construction power, etc.).
- Removal and disposal of hazardous materials, including asbestos-containing materials, to be by Fountain Valley SD. Chevron Energy Solutions has included disposal of existing refrigerant contained within HVAC units removed under this Contract, and existing lamps and lighting ballasts retrofit or replaced under this Contract.
- No allowance has been made to repair or replace damaged or inoperable existing equipment, or wiring that is not specifically being replaced under the Scope of Work. When such items are discovered Chevron Energy Solutions will immediately notify Fountain Valley SD representative.
- Newly installed systems will be code compliant. Chevron Energy Solutions assumes that the existing facilities are compliant to all relevant building codes. No allowances have been made to bring existing systems, not included in this Scope of Work, up to code.
- No allowance has been made for structural upgrades to existing structures.
- No allowance has been made for screen enclosures (i.e., for aesthetic purposes) of new or existing equipment, except as described herein.
- No temporary heating or cooling services have been included in the pricing. Chevron Energy Solutions will attempt to phase construction in such a way as to avoid any complete interruptions of service.
- Fountain Valley SD is responsible for all DSA permit fees and inspection fees.
- Work will be performed during normal work hours; no overtime hours are included. The only two exceptions to this are:
  - After-hours work which may be required for removal and/or installation of rooftop or wall-mounted HVAC equipment, and
  - Lighting scope performed during swing shift.
- Chevron is not responsible for delays to work by Fountain Valley SD, or by SCE, Southern California Gas Company, or other persons not party to this transaction.
- ADA, Fire Life Safety, and other work required as a result of DSA submission are excluded, except as noted below.
- Tie-in to any existing FVSD fire alarm system is excluded.
- No trenching work for conduits or piping is included in this Scope of Work, except as described herein.
- No new or additional gas lines will be installed in connection with the Work.
- Outside air economizers are included for new HVAC units only as specified in the Scope of Work.
- Chevron Energy Solutions standard construction means & methods will be used.
- The parking lot shade canopy structures are not weather tight and will not provide shelter from rain.
- Water hose bibs at the arrays are not included.
- No decorative fascia along the perimeter of the panels or any decorative covering underneath the panels are included.
- Painting, unless specified, is not included.

**ECMs:**

ECM Code	Brief Description of Work
RE-01	<p><b><u>Renewable Energy On-Site Solar Photovoltaic Systems</u></b> Design, engineer and install photovoltaic power generating systems on steel-frame shade structures at ten (10) FVSD campuses.</p>
L-01	<p><b><u>District-wide Energy Efficient Lighting Upgrade (Interior and Exterior)</u></b> Retrofit or replace existing light fixtures with higher efficiency, energy efficient lamps and electronic ballasts, HID and LED technologies and reflector installation as appropriate. Includes classrooms, staff, office, parking lot, and other areas as defined in Appendix B – Lighting Assessment.</p>
DL-01	<p><b><u>Install Daylighting Technology at Four Campuses</u></b> Provide and install Solatube skylights at Fulton MS, Masuda MS, Plavan ES and Talbert MS campuses. Installations will be in high-ceiling common areas such as multi-purpose rooms, libraries and learning centers.</p>
M-01	<p><b><u>Replace Portable Classroom AC Units</u></b> Provide replacement of sixty-eight (68) existing wall-mounted portable classroom HVAC units with 9.0 EER high efficiency heat pump units.</p>
M-02	<p><b><u>Replace Rooftop AC Units at Plavan ES</u></b> Provide and install thirty-three (33) high-efficiency (15.0 SEER) roof-mounted gas/electric HVAC units at Plavan Elementary School.</p>
DDC-01	<p><b><u>Provide Web-Based Programmable Thermostats at Plavan ES</u></b> Provide and install thirty-three (33) Proliphix internet-managed thermostats at Plavan Elementary School.</p>
DDC-02	<p><b><u>Provide Web-Based Programmable Thermostats at the FVSD District Office Facility</u></b> Provide and install thirty-five (35) Proliphix internet-managed thermostats at the District Office facility.</p>
DDC-03	<p><b><u>Provide Web-Based Programmable Thermostats for Portable Classroom HVAC Units</u></b> Provide and install sixty-eight (68) Proliphix internet-managed thermostats on Fountain Valley SD's portable classroom HVAC heat pump units.</p>
MAINT-01	<p><b><u>Install Gutters on Various Portable Classroom Units</u></b> Replace gutters and downspouts on various portable classroom units.</p>

**ECM RE-01: Renewable Energy On-Site Solar Photovoltaic Systems**

**ECM RE-01 Project Locations**

1. Roch Courreges Elementary, 18313 Santa Carlotta Street
2. James H. Cox Elementary, 17615 Los Jardines East
3. Harry C. Fulton Middle, 8778 El Lago Street
4. Robert Gisler Elementary, 18720 Las Flores Street
5. Kazuo Masuda Middle School, 17415 Los Jardines West
6. William T. Newland Elementary, 8787 Dolphin Street
7. Isojiro Oka Elementary, 9800 Yorktown Avenue
8. Urbain H. Plavan Elementary, 9675 Warner Avenue
9. Samuel E. Talbert Middle School, 9101 Brabham Drive
10. Hisamatsu Tamura Elementary, 17340 Santa Suzanne Street

**ECM RE-01 General Scope of Work**

Chevron Energy Solutions will design, engineer, and install photovoltaic power generating systems on steel-frame shade structures at ten (10) locations throughout Fountain Valley SD, including the campuses described below. The basis of the photovoltaic system shade structure design is the DSA pre-approved T-4 structures developed by Chevron Energy Solutions. System sizes, based on Standard Test Conditions (STC), and brief descriptions of the installation at each campus follow. The final configuration and location of free-standing PV shade structures at each site will be determined in final engineering and are subject to DSA review and approval. String inverters will be mounted on the vertical support columns, with conduit runs from each of the inverters to a central AC combiner board –

one for each array. AC wiring will then be run from the combiner boards through underground conduits to a wall-mounted disconnect switch located adjacent to each campus's main electrical panel. String inverters will also function as the main DC voltage wiring termination point (i.e., built-in six-circuit string combiner), and include an integrated, lockable DC disconnect switch. This Scope of Work includes the following:

- Provide and install PV shade structures as depicted in the DSA pre-checked T-4 design drawings.
- Provide and install Fronius IG Plus V 10.0-3 string inverters (or approved equal); quantities vary by site, as described below.
- Provide and install applicable conduit and AC power wiring from string inverters and tie into existing switchgear panel; this includes performing necessary trenching work, or directional boring, to run the applicable conduit.
- Trees and light poles in the areas affected by PV will be removed and disposed of.
- Provide and install T-8 fluorescent light fixtures beneath the T-4 structures; quantities vary by site.
- Concrete, asphalt and landscaping removed or disturbed during installation of the PV structures will be patched.
- Painting of the PV structure columns and cross-beams will be included at each location; one coat standard industry steel primer and one coat standard industry steel paint to be included; maximum of two color options across all sites.

**ECM RE-01 Scope of Work Specific to Each Campus**

**Roch Courreges Elementary School: 76.4 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of one (1) array, located in the general playground area south of the main campus. The longitudinal axis of the array will run in an east/west direction. The system will consist of two hundred ninety-four (294) approximately 260-Watt photovoltaic modules and seven (7) 10-kW string inverters.

**James H. Cox Elementary School: 66.5 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of two (2) arrays, located in the northeast parking area adjacent to Los Jardines East. The longitudinal axes of the arrays will run in a north/south direction. One array will be a T-structure and include one hundred twenty-six (126) approximately 260-Watt photovoltaic modules; the other array, immediately adjacent to Los Jardines East, will be an L-structure and include one hundred twenty-six (126) PV modules. Each array will include three (3) 10-kW string inverters. Total PV module count is 252.

**Harry C. Fulton Middle School: 87.4 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of two (2) arrays, located in the northeast parking area adjacent to El Lago Street. The longitudinal axes of the arrays will run in a northwest/southeast direction. One array will be a T-structure and include two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters; the other array, immediately adjacent to El Lago Street, will be a T-structure and include one hundred twenty-six (126) PV modules and three (3) 10-kW string inverters. Total PV module count is 336.

**Robert Gisler Elementary School: 54.6 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of one (1) array, located in the southwest parking area, adjacent to Las Flores Street. The longitudinal axis of the array will run in a north/south direction. The system will consist of two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters.

**Kazuo Masuda Middle School: 87.4 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of two (2) arrays, located on the west side of the main campus. The two existing canvas shade covers in that area will be removed to make room for the new PV structures. The longitudinal axes of the arrays will run in an east/west direction. Each array will be a T-structure and include one hundred sixty-eight (168) approximately 260-Watt photovoltaic modules and four (4) 10-kW string inverters. Total PV module count is 336.

**William T. Newland Elementary School: 54.6 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of one (1) array, located on the northwest side of the campus, just north of the large asphalt playground area. The longitudinal axis of the array will run in an east/west direction. The system will consist of two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters.

**Isojiro Oka Elementary School: 54.6 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of one (1) array, located in the main parking area on the northeast side of the campus, between Yorktown Avenue and Education Lane. The longitudinal axis of the array will run in a northwest/southeast direction. The system will consist of two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters.

**Urbain H. Plavan Elementary School: 109.2 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of two (2) arrays, located on the northwest side of the main campus, just north of the existing lunch area canvas shade structures. The two existing canvas shade covers in that area will remain in place. The longitudinal axes of the arrays will run in an east/west direction. Each array will be a T-structure and include two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters. Total PV module count is 420.

**Samuel E. Talbert Middle School: 76.4 kWDC-STC System**

Chevron Energy Solutions will design-build a solar PV system consisting of two (2) arrays, located in the southeast parking area adjacent to Brabham Drive. The longitudinal axes of the arrays will run in an east/west direction. One array will be a T-structure and include one hundred twenty-six (126) approximately 260-Watt photovoltaic modules and three (3) 10-kW string inverters; the other array, immediately adjacent to Brabham Drive, will be a T-structure and include one hundred sixty-eight (168) PV modules and four (4) 10-kW string inverters. Total PV module count is 294.

Hisamatsu Tamura Elementary School: 54.6 kWDC-STC System

Chevron Energy Solutions will design-build a solar PV system consisting of one (1) array, located on the north side of the campus, just north of the large asphalt playground area. The longitudinal axis of the array will run in an east/west direction. The system will consist of two hundred ten (210) approximately 260-Watt photovoltaic modules and five (5) 10-kW string inverters.

### **ECM L-01: District-wide Energy Efficient Lighting Upgrade (Interior and Exterior)**

#### **ECM L-01 Project Locations**

1. Roch Courreges Elementary, 18313 Santa Carlotta Street
2. James H. Cox Elementary, 17615 Los Jardines East
3. Harry C. Fulton Middle, 8778 El Lago Street
4. Robert Gisler Elementary, 18720 Las Flores Street
5. Kazuo Masuda Middle School, 17415 Los Jardines West
6. William T. Newland Elementary, 8787 Dolphin Street
7. Isojiro Oka Elementary, 9800 Yorktown Avenue
8. Urbain H. Plavan Elementary, 9675 Warner Avenue
9. Samuel E. Talbert Middle School, 9101 Brabham Drive
10. Hisamatsu Tamura Elementary, 17340 Santa Suzanne Street
11. FVSD District Office, 10055 Slater Avenue
12. FVSD Maintenance & Operations Facility, 17330 Mt. Hermann Street

#### **ECM L-01 General Scope of Work**

Chevron Energy Solutions will retrofit and/or replace existing light fixtures with energy efficient lamps and electronic ballasts or other energy-efficient lighting technologies, as specified in Appendix B – Lighting Assessment. Chevron Energy Solutions will perform the following work:

- Provide equipment and materials as outlined in the lighting assessment spreadsheets.
- Replace broken or compromised lamp sockets.
- Replace yellowed and/or broken lenses with new lenses that match originals as closely as possible.
- Dispose of removed lamps and ballasts per EPA, state and local regulations.

In general, FVSD lighting upgrades fall into the following retrofit or replacement categories. For quantities of each retrofit, refer to the line-by-line lighting assessment, included in Appendix B.

- New 2' vanity fixture with two (2) F17T8 17W lamps; one (1) 2-lamp LP electronic ballast
- New 8' wrap fixture with four (4) F32T8 28W lamps; one (1) 4-lamp LP electronic ballast
- New 4' high-bay fixture with four (4) F54T5HO 50W lamps; one (1) 4-lamp HO electronic ballast and (1) on-board 360-degree occupancy sensor
- New small wall pack 15W LED
- New LED low profile square fixture 15W
- New area light 78W LED lamp and driver
- New LED exit sign with battery backup
- CFL 15W screw in spring lamp
- Three (3) F17T8 lamps; one (1) 3-lamp LP electronic ballast; one (1) 2x2 reflector
  - F32T8 28W lamps; (.5) 2-lamp LP electronic ballast
- F32T8 28W lamps; (.25) 4-lamp LP electronic ballast
- F32T8 28W lamps; one (1) 1-lamp LP electronic ballast
- F32T8 28W lamps; one (1) 2-lamp LP electronic ballast
- F32T8 28W lamps; one (1) 1&2 lamp LP electronic ballast
- F32T8 28W lamps; one (1) 3-lamp LP electronic ballast
- F32T8 28W lamps; one (1) 3-lamp LP electronic ballast; (1) 2x4 reflector
- F32T8 28W lamps; one (1) 4-lamp LP electronic ballast
- LED MR16 6W lamp (small track lighting lamp)
- LED screw-in R30 15W lamp (flood light)
  - LED screw-in R30 15W lamp
- LED retrofit kit
- Ceiling-mounted occupancy sensor
- Ceiling-mounted occupancy sensor; hard lid with wire molding
- Fixture-mounted Occupancy sensor
- Wall switch-mounted PIR occupancy sensor
- DND: Do Not Do; fixtures left as is

Lighting Scope Notes:

- LP electronic ballast: Low ballast factor (approx 0.78)

- HO electronic ballast: High output ballast
- (.5) LP electronic ballast: One-half ballast per fixture; one ballast tandem wired across two fixtures butted end to end
- (.25) electronic ballast: One-fourth ballast per fixture; one ballast tandem wired across four fixtures butted end to end
- Reflector includes new reflector, sockets and bracket set
- PIR: Passive Infrared, wall switch-mounted sensor; ceiling sensors are dual-tech PIR and ultrasonic
- MR16: Small track lighting lamp
- R30: Flood-type lamp with reflective housing

**ECM L-01 Scope of Work Specific for Each Campus**

See line-by-line retrofit description per site and space use type, presented in Appendix B.

**ECM DL-01: Install Daylighting Technology at Selected Campuses**

**ECM DL-01 Project Locations**

1. Harry C. Fulton Middle, 8778 El Lago Street
2. Kazuo Masuda Middle School, 17415 Los Jardines West
3. Urbain H. Plavan Elementary, 9675 Warner Avenue
4. Samuel E. Talbert Middle School, 9101 Brabham Drive

**ECM DL-01 General Scope of Work**

Chevron Energy Solutions will provide and install Solatube skylights at four FVSD campuses. Chevron Energy Solutions will perform the following work:

- Perform photometric analysis at the proposed installation areas (high-ceiling common areas, multi-purpose rooms, libraries and learning centers) of each of the four campuses.
- Based on photometric analysis, coordinate with Fountain Valley SD to finalize Solatube quantity and layout patterns, and determine which installations will be enhanced with electrically-powered dimmable Solatube dampers.
- Provide and install 14" and/or 20" diameter round tubular skylights as described below.
- Where applicable, install conduit, power wiring, and a wall-mounted dimmer switch to control Solatube damper installations.
- Provide roof and interior ceiling patch and repair to match existing.

**ECM DL-01 Scope of Work Specific for Each Campus**

By-site Solatube quantities are approximately as follows:

- Harry C. Fulton Middle: 16
- Kazuo Masuda Middle: 16
- Urbain H. Plavan Elementary: 16
- Samuel E. Talbert Middle: 23

**ECM M-01: Replace Portable Classroom A/C Units**

**ECM M-01 Project Locations**

1. Roch Courreges Elementary, 18313 Santa Carlotta Street
2. James H. Cox Elementary, 17615 Los Jardines East
3. Harry C. Fulton Middle, 8778 El Lago Street
4. Robert Gisler Elementary, 18720 Las Flores Street
5. Kazuo Masuda Middle School, 17415 Los Jardines West
6. William T. Newland Elementary, 8787 Dolphin Street
7. Isojiro Oka Elementary, 9800 Yorktown Avenue
8. Urbain H. Plavan Elementary, 9675 Warner Avenue
9. Samuel E. Talbert Middle School, 9101 Brabham Drive
10. Hisamatsu Tamura Elementary, 17340 Santa Suzanne Street

**ECM M-01 General Scope of Work**

Chevron Energy Solutions will remove and replace sixty-eight (68) existing wall-mounted HVAC heat pump units, including sixty-eight (68) new Web-based internet-managed thermostats as described under ECM DDC-03. The new heat pump units will meet current Title 24 efficiency guidelines, and will be equipped with economizers.

**ECM M-01 Scope of Work Specific for Each Campus**

Chevron Energy Solutions will provide replacement of wall-mounted portable classroom HVAC units as follows:

- Demo existing wall-mount heat pumps.
- Furnish and install new 9.0 SEER wall-mounted heat pumps with economizers.
- Replace existing thermostats with new internet-managed units: see ECM DDC-03 description.
- Provide new electrical disconnect switch, and connect line voltage electrical.
- Start up and test.

Wall-mount HVAC unit replacement quantities by site are as follows:

- Roch Courreges Elementary: 5
- James H. Cox Elementary: 11
- Harry C. Fulton Middle: 9
- Robert Gisler Elementary: 3
- Kazuo Masuda Middle School: 12
- William T. Newland Elementary: 6
- Isojiro Oka Elementary: 4
- Urbain H. Plavan Elementary: 6
- Samuel E. Talbert Middle School: 8
- Hisamatsu Tamura Elementary: 4

**ECM M-02: Replace Rooftop AC Units at Plavan ES**

**ECM M-02 Project Location**

1. Urbain H. Plavan Elementary, 9675 Warner Avenue

**ECM M-02 General Scope of Work**

Chevron Energy Solutions will remove and replace thirty-three (33) existing rooftop AC units, one (1) existing Reznor rooftop duct heater and one (1) existing rooftop evaporative cooler. The installation also includes thirty-three (33) new Web-based internet-managed thermostats as described under ECM DDC-01. The new AC units will meet current Title 24 efficiency guidelines, and each will be equipped with an economizer and CO2 sensor. Chevron Energy Solutions will replace the Reznor heater and evaporative cooler with units of similar size, unless it is determined in the engineering phase that these can be replaced with a single exhaust fan that meets code for this application. Chevron Energy Solutions will also install return air ducts for each of the following units: ACM17, ACM18, ACM6, ACM5, ACLO, ACTO, ACM10, ACM9, ACM14 and ACM13.

**ECM M-02 Specific Scope of Work**

Chevron Energy Solutions will provide replacement of roof-mounted HVAC equipment, as follows:

- Thirty-three (33) ea – demo and remove existing rooftop AC units.
- One (1) ea – demo and remove existing Reznor rooftop duct heater.
- One (1) ea – demo and remove existing rooftop evaporative cooler.
- Thirty-three (33) ea – remove existing thermostats.
- Thirty-three (33) ea – provide and install new Carrier (or approved equal) 5-ton rooftop packaged gas/electric units (15 SEER) with economizers.
- Chevron Energy Solutions has allowed for six (6) adaptor curbs to provide additional separation of the three (3) existing back-to-back AC unit installations. If during final design Chevron Energy Solutions determines that separation of the units is not required, the six (6) adapter curbs will be eliminated from the Scope of Work.
- One (1) ea – provide and install new kitchen rooftop Reznor (or approved equal) 300 Mbtuh, 1,500 cfm duct furnace.
- One (1) ea – provide and install new kitchen rooftop MasterCool (or approved equal) 1,200 cfm evaporative cooler.
- Thirty three (33) ea – CO2 sensors and wiring compatible with Web-based internet-managed thermostats described under ECM DDC-01.
- Replace existing thermostats with new internet-managed units: see ECM DDC-01 description.
- Ten (10) ea – provide and install rooftop return air duct for each of the following units: ACM17, ACM18, ACM6, ACM5, ACLO, ACTO, ACM10, ACM9, ACM14 and ACM13.
- Provide start-up and test of each unit.
- Perform air balance.
- Gas piping hook-up.
- Connect line voltage electrical, including new disconnect switch for each AC unit.
- Reconnect existing condensate drain piping.
- Connect low voltage wiring.

- Provide and install one new smoke detector per unit.
- Interconnection of smoke detectors to fire alarm annunciator panel is by Fountain Valley SD.

**ECM DDC-01: Provide Web-Based Programmable Thermostats at Plavan ES**

**ECM DDC-01 Project Location**

1. Urbain H. Plavan Elementary, 9675 Warner Avenue

**ECM DDC-01 General Scope of Work**

Chevron Energy Solutions will provide and install thirty-three (33) Proliphix internet-managed thermostats at Plavan Elementary School.

**ECM DDC-01 Specific Scope of Work**

- Provide and install thirty-three (33) Proliphix internet-managed thermostats.
- Provide hard-wire connection from each thermostat to the appropriate HVAC unit.
- Assist Fountain Valley SD's IT Department with coordinating tie-in to the appropriate thermostat IP address.
- Verify proper operation of each thermostat and controllability of associated HVAC units.

**ECM DDC-02: Provide Web-Based Programmable Thermostats at the FVSD District Office**

**ECM DDC-02 Project Location**

1. FVSD District Office, 10055 Slater Avenue

**ECM DDC-02 General Scope of Work**

Chevron Energy Solutions will provide and install thirty-five (35) Proliphix internet-managed thermostats at the District Office facility.

**ECM DDC-02 Specific Scope of Work**

- Provide and install thirty-five (35) Proliphix internet-managed thermostats.
- Provide hard-wire connection from each thermostat to the appropriate HVAC unit.
- Assist Fountain Valley SD's IT Department with coordinating tie-in to the appropriate thermostat IP address.
- Verify proper operation of each thermostat and controllability of associated HVAC units.

**ECM DDC-03: Provide Web-Based Programmable Thermostats for Portable Classroom HVAC Units**

**ECM DDC-03 Project Locations**

1. Roch Courreges Elementary, 18313 Santa Carlotta Street
2. James H. Cox Elementary, 17615 Los Jardines East
3. Harry C. Fulton Middle, 8778 El Lago Street
4. Robert Gisler Elementary, 18720 Las Flores Street
5. Kazuo Masuda Middle School, 17415 Los Jardines West
6. William T. Newland Elementary, 8787 Dolphin Street
7. Isojiro Oka Elementary, 9800 Yorktown Avenue
8. Urbain H. Plavan Elementary, 9675 Warner Avenue
9. Samuel E. Talbert Middle School, 9101 Brabham Drive
10. Hisamatsu Tamura Elementary, 17340 Santa Suzanne Street

**ECM DDC-03 General Scope of Work**

Provide and install sixty-eight (68) Proliphix internet-managed thermostats on Fountain Valley SD's portable classroom HVAC heat pump units.

**ECM DDC-03 Specific Scope of Work**

- Provide and install sixty-eight (68) Proliphix internet-managed thermostats.
- Provide hard-wire connection from each thermostat to the appropriate HVAC unit.
- Assist Fountain Valley SD's IT Department with coordinating tie-in to the appropriate thermostat IP address.
- Verify proper operation of each thermostat and controllability of associated HVAC units.

**ECM DDC-03 Scope of Work Specific for Each Campus**

Proliphix internet-managed thermostat installations by site are as follows:

- Roch Courreges Elementary: 5

- James H. Cox Elementary: 11
- Harry C. Fulton Middle: 9
- Robert Gisler Elementary: 3
- Kazuo Masuda Middle School: 12
- William T. Newland Elementary: 6
- Isojiro Oka Elementary: 4
- Urbain H. Plavan Elementary: 6
- Samuel E. Talbert Middle School: 8
- Hisamatsu Tamura Elementary: 4

**ECM MAINT-01: Install Gutters on Various Portable Classroom Units**

**ECM MAINT-01 Project Locations**

1. Roch Courreges Elementary, 18313 Santa Carlotta Street
2. James H. Cox Elementary, 17615 Los Jardines East
3. Harry C. Fulton Middle, 8778 El Lago Street
4. Robert Gisler Elementary, 18720 Las Flores Street
5. Kazuo Masuda Middle School, 17415 Los Jardines West
6. William T. Newland Elementary, 8787 Dolphin Street
7. Isojiro Oka Elementary, 9800 Yorktown Avenue
8. Urbain H. Plavan Elementary, 9675 Warner Avenue
9. Samuel E. Talbert Middle School, 9101 Brabham Drive
10. Hisamatsu Tamura Elementary, 17340 Santa Suzanne Street

**ECM MAINT-01 General Scope of Work**

Chevron Energy Solutions will replace existing metal gutters on selected portable classrooms at nine (9) of the ten (10) FVSD campuses.

**ECM MAINT-01 Specific Scope of Work**

Installation Includes

- Remove existing metal gutters and downspouts
- Recycle or properly dispose of removed materials
- Gutters will be constructed of 24-gauge hot-dipped galvanized steel sheet metal; downspouts will be constructed of 20-gauge hot-dipped galvanized steel sheet metal; exterior surfaces of gutters and downspouts will be etched and coated with one coat standard industry steel primer and one coat standard industry steel paint; maximum of two color options across all sites.
- Install new metal gutters and downspouts per the following table

<b>Campus Number</b>	<b>Campus / Facility</b>	<b>Portable Qty for Gutter Replacement</b>	<b>Total Gutter to Replace (ft) *</b>
<b>1</b>	<b>Roch Courreges Elementary School</b>	<b>2</b>	<b>70</b>
<b>2</b>	<b>James H. Cox Elementary School</b>	<b>9</b>	<b>315</b>
<b>3</b>	<b>Harry C. Fulton Middle School</b>	<b>4</b>	<b>140</b>
<b>4</b>	<b>Robert Gisler Elementary School</b>	<b>3</b>	<b>105</b>
<b>5</b>	<b>Kazuo Masuda Middle School</b>	<b>6</b>	<b>210</b>
<b>6</b>	<b>William T. Newland Elementary School</b>	<b>4</b>	<b>140</b>
<b>7</b>	<b>Isojiro Oka Elementary School</b>	<b>2</b>	<b>70</b>
<b>8</b>	<b>Urbain H. Plavan Elementary School</b>	<b>4</b>	<b>140</b>
<b>9</b>	<b>Samuel E. Talbert Middle School</b>	<b>N/A</b>	<b>N/A</b>
<b>10</b>	<b>Hisamatsu Tamura Elementary School</b>	<b>2</b>	<b>70</b>

<b>Subtotals:</b>	<b>36</b>	<b>1,260</b>
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\* Includes allowance for downspout replacement.

**ATTACHMENT E  
SCOPE OF ENVISION SERVICES**

**FACILITIES COVERED**

Chevron Energy Solutions will perform educational services ("Envision Services") as defined in this Attachment E at the following Project Locations:

- Roch Courreges Elementary
- James H. Cox Elementary
- Harry C. Fulton Middle
- Robert Gisler Elementary
- Kazuo Masuda Middle School
- William T. Newland Elementary
- Isojiro Oka Elementary
- Urbain H. Plavan Elementary
- Samuel E. Talbert Middle School
- Hisamatsu Tamura Elementary

**I. Term**

So long as Fountain Valley SD pays to Chevron Energy Solutions the Annual Envision Fee, Chevron Energy Solutions will provide the Envision Services, as described herein, up to four (4) years from the M&V Commencement Date on an annualized basis.

**II. Annual Envision Fee**

The Annual Envision Fee for the first Measurement Period will be invoiced by Chevron Energy Solutions to Fountain Valley SD in a lump sum on the M&V Commencement Date. All subsequent Annual Envision Fees will be invoiced by Chevron Energy Solutions on the first day of the corresponding Measurement Period. Fountain Valley SD, or its designee, will pay Chevron Energy Solutions such Annual Envision Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Fountain Valley SD gives Chevron Energy Solutions prior written notice of its intent to terminate the Envision Services, any failure to timely pay the Annual Envision Fee in accordance with this Attachment E will be a material default by Fountain Valley SD under the Contract, and Chevron Energy Solutions, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Envision Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Envision Fee is not refundable for any reason.

**III. Educational Services Provided**

Chevron Energy Solutions will provide the following:

Site No.	Campus/Facility	Hands On Learning Kits	Living Lab: Solar, Weather Station, Lighting	21st Century Learning: Energyville	Student and Staff Engagement	Professional Development on Kits, Energy, Labs
1	Courreges Elementary School	x	x		x	70 Sessions
2	Cox Elementary School	x	x		x	
3	Fulton Middle School	x	x	x	x	
4	Gisler Elementar School	x	x		x	
5	Masuda Middle School	x	x	x	x	
6	Newland Elementary School	x	x		x	
7	Oka Elementary School	x	x		x	
8	Plavan Elementary School	x	x		x	
9	Talbert Middle School	x	x	x	x	
10	Tamura Elementary School	x	x		x	

**Hands-On Learning Kits:** Kits are supplied for hands-on learning engagements with specific grade levels and curriculum tied to Common Core State Standards. The kits include a variety of grade-appropriate equipment for conducting relevant experiments, together with lesson plan guides for the teacher and the students. The kits will supply a classroom set for 36 students working in teams. Implementation of these kits will be staggered over the four (4) year life of the Envision Contract.

Energy Efficiency

- Four (4) classroom kits for grades 3-5
- Three (3) classroom kits for grades 6-8

Solar Photovoltaic

- Four (4) classroom kits for grades K-2
- Four (4) classroom kits for grades 3-5
- One (1) classroom kit for grades 6-8

Science of Energy

- One (1) classroom kit for grades K-2
- One (1) classroom kit for grades 3-5

Energyworks

- One (1) classroom kit for grades 3-5

Hydropower

- Four (4) classroom kits for grades K-2
- Four (4) classroom kits for grades 3-5
- Four (4) classroom kits for grades 6-8

**Living Labs:** Data points from Chevron Energy Solutions installed technologies are input into student facing dashboards for real world application.

- Data from solar PV installations pulled into a student facing dashboard for ten (10) schools
- Data from weather station at one school (location to be determined by Fountain Valley SD) pulled into student facing dashboard
- Data from different lighting technologies at one school (location to be determined jointly by Fountain Valley SD and Chevron Energy Solutions) pulled into a student facing dashboard

- Data for all living labs can be viewed by any Fountain Valley SD school with an internet connection

**Energyville**<sup>®</sup>: Online educational game.

- Supply science teachers at three (3) middle schools with a total of ten (10) digital copies of the curriculum resource
- Supply science teachers at three (3) middle schools with three (3) sets of thirty-six (36) classroom posters

**Student and Staff Engagement:**

- Provide one set per school of documents, materials and training for implementation of “Green” Teams
- Develop Behavior Change Action implementation plan for each school
- Meet once with Green Teams to set up communication plan and assembly ideas
- Benchmark individual school utility usage
- Set up assessment teams to track utility usage
- Provide one set per school of documents, materials and training for implementation of District-sponsored recognition program

**Professional Development:** Teacher professional development on Energyville, hands-on learning kits, student and staff engagement and living labs.

- Seventy (70) sessions over four (4) years for a total of 100 hours
  - We are suggesting:
    - Ten (10) sessions of one (1) hour each for years 1-4
    - Eight (8) sessions of two (2) hours each for years 1-3
    - Six (6) sessions of two (2) hours each for year 4

**ATTACHMENT F  
ALLOCATION OF CONTRACT AMOUNT**

Design, Engineering & Mobilization Fee	\$ 1,202,560.00
Remaining Implementation Cost	\$ 6,814,502.00
Contract Amount	\$ 8,017,062.00

The design, engineering and mobilization fee will be invoiced to Fountain Valley SD upon both parties signing the Energy Services Contract and is due and payable as detailed in the Contract.

Following Contract execution, Chevron Energy Solutions, with input from Fountain Valley SD, will establish a project schedule of values (SOV). Monthly billing will be invoiced to Fountain Valley SD according to earned value against the SOV.

**ATTACHMENT G  
STANDARDS OF OCCUPANCY & CONTROL**

The following standards are guidelines used by Chevron Energy Solutions engineers to evaluate the HVAC energy conservation measures and their savings in this program. It is understood that existing and installed equipment may not allow for exact times and temperatures to be met, but every effort will be made to meet the guidelines as closely as the equipment allows.

<b>Standards of Occupancy and Control for HVAC Equipment</b>						
<b>Facility</b>	<b>Existing / Baseline</b>			<b>Proposed</b>		
	<b>Schedule</b>	<b>Cooling Setpoint</b>	<b>Heating Setpoint</b>	<b>Schedule</b>	<b>Cooling Setpoint</b>	<b>Heating Setpoint</b>
District Office (1 <sup>st</sup> Floor Heat Pumps)	Mon – Fri: 06:00 – 20:00 Weekends: 08:00 – 17:00	73F	68F	Mon – Fri: 07:00 – 17:00 Weekends: 13:00 – 17:00	74F	68F
District Office (2 <sup>nd</sup> Floor Heat Pumps)	Mon – Fri: 04:00 – 22:00 Weekends: 04:00 – 22:00	73F	68F	Mon – Fri: 06:00 – 19:00 Weekends: 06:00 – 19:00	74F	68F
Plavan Elementary School	Mon – Fri: 07:00 – 18:00 Weekends: N/A	71F	73.5F	Mon – Fri: 07:00 – 17:00 Weekends: N/A	72.5F	71F
Portable Classroom HVAC Units (typical of all sites)	Mon – Fri: 07:00 – 16:00 Weekends: N/A	72F	74F	Mon – Fri: 07:00 – 15:00 Weekends: N/A	72.5F	71F

**Notes**

District Office Rooftop and Split System Heat Pumps:

- Intermittent fan operation for baseline case and continuous fan operation for the post-retrofit case.

Plavan ES Rooftop AC Units:

- Weekdays when school is in session, assumed intermittent fan operation for the baseline case and continuous operation post-retrofit for ventilation.
- Weekdays, including summer, assumed Administration area is open, based on utility history, with intermittent fan operation for baseline case and continuous operation for post-retrofit case.

Portable Classrooms, Typical of All Campuses:

- Weekdays when school is in session, assumed intermittent fan operation for the baseline case and continuous operation post-retrofit for ventilation.

**ATTACHMENT H  
SAVINGS MEASUREMENT & VERIFICATION PLAN**

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

<b>Table H-1 Retrofit and M&amp;V Technique Matrix</b>					
<b>ECM No.</b>	<b>ECM Description</b>	<b>Campus / Facility</b>	<b>M&amp;V Technique</b>	<b>Annual Electric Savings (kWh)</b>	<b>Electric Rate (\$)</b>
RE-01	Renewable Energy On-Site Solar PV	Roch Courreges Elementary School	Technique B	108,369	0.2086
RE-01	Renewable Energy On-Site Solar PV	James H. Cox Elementary School	Technique B	90,116	0.2082
RE-01	Renewable Energy On-Site Solar PV	Harry C. Fulton Middle School	Technique B	123,631	0.2017
RE-01	Renewable Energy On-Site Solar PV	Robert Gisler Elementary School	Technique B	77,681	0.2038
RE-01	Renewable Energy On-Site Solar PV	Kazuo Masuda Middle School	Technique B	123,631	0.2085
RE-01	Renewable Energy On-Site Solar PV	William T. Newland Elementary School	Technique B	77,681	0.2345
RE-01	Renewable Energy On-Site Solar PV	Isojiro Oka Elementary School	Technique B	77,319	0.1903
RE-01	Renewable Energy On-Site Solar PV	Urbain H. Plavan Elementary School	Technique B	153,992	0.2238
RE-01	Renewable Energy On-Site Solar PV	Samuel E. Talbert Middle School	Technique B	108,369	0.1960
RE-01	Renewable Energy On-Site Solar PV	Hisamatsu Tamura Elementary School	Technique B	77,681	0.1943
L-01	Interior & Exterior Lighting Upgrades	Roch Courreges Elementary School	Technique A	34,392	0.2086
L-01	Interior & Exterior Lighting Upgrades	James H. Cox Elementary School	Technique A	49,167	0.2082
L-01	Interior & Exterior Lighting Upgrades	Harry C. Fulton Middle School	Technique A	40,570	0.2017
L-01	Interior & Exterior Lighting Upgrades	Robert Gisler Elementary School	Technique A	37,903	0.2038
L-01	Interior & Exterior Lighting Upgrades	Kazuo Masuda Middle School	Technique A	55,412	0.2085
L-01	Interior & Exterior Lighting Upgrades	William T. Newland Elementary School	Technique A	51,760	0.2345
L-01	Interior & Exterior Lighting Upgrades	Isojiro Oka Elementary School	Technique A	38,748	0.1903
L-01	Interior & Exterior Lighting Upgrades	Urbain H. Plavan Elementary School	Technique A	30,450	0.2238
L-01	Interior & Exterior Lighting Upgrades	Samuel E. Talbert Middle School	Technique A	36,154	0.1960
L-01	Interior & Exterior Lighting Upgrades	Hisamatsu Tamura Elementary School	Technique A	34,986	0.1943
L-01	Interior & Exterior Lighting Upgrades	FVSD District Office	Technique A	38,775	0.1591
L-01	Interior & Exterior Lighting Upgrades	FVSD Maintenance & Operations	Technique A	34,854	0.1550
DL-01	Install Daylighting Technology	Harry C. Fulton Middle School	Stipulated	13,077	0.2017
DL-01	Install Daylighting Technology	Kazuo Masuda Middle School	Stipulated	8,587	0.2085
DL-01	Install Daylighting Technology	Urbain H. Plavan Elementary School	Stipulated	14,513	0.2238
DL-01	Install Daylighting Technology	Samuel E. Talbert Middle School	Stipulated	18,646	0.1960
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Roch Courreges Elementary School	Stipulated	5,800	0.2086
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	James H. Cox Elementary School	Stipulated	12,789	0.2082
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Harry C. Fulton Middle School	Stipulated	10,797	0.2017
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Robert Gisler Elementary School	Stipulated	3,562	0.2038
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Kazuo Masuda Middle School	Stipulated	13,927	0.2085
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	William T. Newland Elementary School	Stipulated	6,192	0.2345
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Isojiro Oka Elementary School	Stipulated	5,087	0.1903
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Urbain H. Plavan Elementary School	Stipulated	6,489	0.2238
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Samuel E. Talbert Middle School	Stipulated	9,875	0.1960

**Table H-1 Retrofit and M&V Technique Matrix**

ECM No.	ECM Description	Campus / Facility	M&V Technique	Annual Electric Savings (kWh)	Electric Rate (\$)
M-01	Portable Classroom HVAC Units (Includes DDC-03 Savings)	Hisamatsu Tamura Elementary School	Stipulated	4,981	0.1943
M-02	Replace Rooftop HVAC Units With High Efficiency (Includes DDC-01 Savings)	Urbain H. Plavan Elementary School	Stipulated	48,142	0.2086
DDC-02	Web-Based Controllable Stats (35 HVAC Units)	FVSD District Office	Stipulated	9,875	0.1550

1. M&V Technique A: This technique allows for the energy savings to be predicted, measured, and agreed upon between Fountain Valley SD and Chevron Energy Solutions. One time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.

- a. Chevron Energy Solutions will supply a one-time report to Fountain Valley SD detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, Chevron Energy Solutions will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at Chevron Energy Solutions' expense and will not be unreasonably denied by Fountain Valley SD, as long as such work does not interfere with Fountain Valley SD's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.

b. Scope of Work

1. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped site-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs, will be stipulated at their manufacturer's rated wattage. Groups of fixtures with ballasts will be measured in the following manner:
  - a. For groups with 2000 or more fixtures, nine (9) instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and will be the measured wattage for that fixture type.
  - b. For groups with 500 fixtures or more but less than 2000, six (6) instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and will be the measured wattage for that fixture type.
  - c. For groups with 100 fixtures or more but less than 500, three (3) instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and will be the measured wattage for that fixture type.
  - d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage for that group will be stipulated to equal the wattage defined in *Tables H-2 and H-3*, showing the existing fixture codes, quantities, and manufacturer's rated wattage for these type fixtures.
2. The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon by Fountain Valley SD and are presented in *Table H-4, Annual Lighting Hours by Room Type*. The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.
3. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.
4. The total annual Energy Savings dollars achieved from the Lighting ECMs are calculated by the following equations:

Total annual savings = annual consumption savings; where,

Annual consumption savings = Annual unit consumption savings times operating hours (as listed in *Table H-3*) times electric consumption rate, where the unit rates are defined for the first year of the savings period and are the contractual rates stated in Attachment H herein. These rates are to



**Table H-3 District-Wide Proposed Interior/Exterior Lighting Quantities**

Fountain Valley School District - RETROFIT Fixture Quantities to (POST) M&V				
Fixture Type	Predicted Watts	Qty	# to M&V	Notes
1L 3W LED Exit	3	4	0	
1L 6W LED Exit	6	2	0	
1L 15W LED Exit	15	331	0	Exit
1L 28W T8 Low	22	85	0	
1L 32W LED Exterior	32	16	0	
2L 17W CFL	34	3	0	
2L 28W T8 Low	44	8785	9	
3L 17W T8	48	49	0	
2L 28W T8	49	75	0	
2L 32W T8 Low	52	16	0	
3L 28W T8 Low	66	1581	6	
3L 28W T8	73.5	6	0	
1L 78W LED	78	55	0	
4L 28W T8 Low	88	36	0	
4L 50W Incand.	200	20	0	
<b>Fixtures not scheduled for a retrofit.</b>				
1L 3W LED Exit	3	2	0	
1L 13W CFL	15	37	0	
1L 18W CFL	21	121	0	
1L 26W CFL	26	151	0	
2L 13W CFL	31.2	228	0	
2L 26W CFL	52	202	0	
2L 40W CFL	80	40	0	
3L 40W CFL	120	23	0	
6L 26W CFL	150	8	0	
1L 150W Incand.	150	34	0	
1L 200W Incand.	200	17	0	
1L 250W Incand.	250	8	0	
Total Qty		11935	<b>15</b>	
Total Qty to Retrofit		11064	93%	
Total Qty to M&V		10366	94%	

**Table H-4 Annual Lighting Hours by Room Type - Stipulated**

Fountain Valley School District - Agreed Upon Lighting Hours of Operation		
Building	Area Type	Annual Hours
District Office	Tenant Space	1,733
	Hallways	2,997
	Offices	2,309
	Restrooms	2,594

**Table H-4 Annual Lighting Hours by Room Type - Stipulated**

Fountain Valley School District - Agreed Upon Lighting Hours of Operation			
	Exterior & Parking	4,928	
	Underground Parking	2,646	
	Sign	1,825	
M&O	Offices	1,291	
	Front Desk & Hallways	2,692	
	Shops	1,119	
	High-Bay Areas	1,119	
	Lounge	2,579	
	Warehouse	650	
	Parking	4,200	
	Exterior	4,200	
	Restrooms	3,055	
	Elementary Schools	Offices & Admin	1,802
		Computer Lab	1,939
Kitchen		1,005	
Library/Learning Center/MP		2,321	
Copy/Supply/Work Room		1,945	
Hallways		2,621	
Classrooms		1,414	
Portables		1,649	
Student Restrooms		2,185	
Staff Restrooms		2,379	
Custodial		2,383	
Parking		2,829	
Exterior		3,615	
Middle Schools		Offices & Admin	1,802
	Computer Lab	1,939	
	Kitchen	1,005	
	Library/Learning Center/MP	2,321	
	Copy/Supply/Work Room	1,945	
	Hallways	2,621	
	Classrooms	1,414	
	Home Economics	1,057	
	Portables	1,649	
	Student Restrooms	2,185	
	Staff Restrooms	2,379	
	Custodial	2,383	
	Locker Rooms	1,540	
	Exterior	3,336	
* The post-retrofit lighting hours will be the same, except for those rooms that have Occupancy Sensors installed, which will result in 25 percent less hours.			

2. M&V Technique B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Technique B is designed for projects where long-term continuous measurement of performance is desired and warranted. Under Technique B, while some parameter may be stipulated or measured once then

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stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.

- a. Chevron Energy Solutions will supply a one-time report to Fountain Valley SD detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
- b. **Scope of Work**  
No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in the table below.

<b>Total Project PV Production</b>											
Year	Courreges ES (kWh)	Cox ES (kWh)	Fulton MS (kWh)	Gisler ES (kWh)	Masuda MS (kWh)	Newland ES (kWh)	Oka ES (kWh)	Plavan ES (kWh)	Talbert MS (kWh)	Tamura ES (kWh)	Total Annual Production (kWh)
1	108,369	90,116	123,631	77,681	123,631	77,681	77,319	153,992	108,369	77,681	1,018,469
2	107,610	89,485	122,765	77,138	122,765	77,137	76,778	152,914	107,610	77,137	1,011,340
3	106,857	88,858	121,906	76,598	121,906	76,597	76,240	151,844	106,857	76,597	1,004,261
4	106,109	88,236	121,053	76,062	121,053	76,061	75,707	150,781	106,109	76,061	997,231
5	105,366	87,619	120,205	75,529	120,205	75,529	75,177	149,725	105,366	75,529	990,250
6	104,629	87,005	119,364	75,000	119,364	75,000	74,650	148,677	104,629	75,000	983,318
7	103,896	86,396	118,528	74,475	118,528	74,475	74,128	147,636	103,896	74,475	976,435
8	103,169	85,792	117,699	73,954	117,699	73,954	73,609	146,603	103,169	73,954	969,600
9	102,447	85,191	116,875	73,436	116,875	73,436	73,094	145,577	102,447	73,436	962,813
10	101,730	84,595	116,057	72,922	116,057	72,922	72,582	144,558	101,730	72,922	956,073
11	101,018	84,003	115,244	72,412	115,244	72,411	72,074	143,546	101,018	72,411	949,381
12	100,311	83,415	114,438	71,905	114,438	71,904	71,569	142,541	100,311	71,904	942,735
13	99,608	82,831	113,636	71,402	113,636	71,401	71,068	141,543	99,608	71,401	936,136
14	98,911	82,251	112,841	70,902	112,841	70,901	70,571	140,552	98,911	70,901	929,583
15	98,219	81,675	112,051	70,406	112,051	70,405	70,077	139,568	98,219	70,405	923,076
16	97,531	81,103	111,267	69,913	111,267	69,912	69,586	138,591	97,531	69,912	916,614
17	96,849	80,536	110,488	69,423	110,488	69,423	69,099	137,621	96,849	69,423	910,198
18	96,171	79,972	109,714	68,937	109,714	68,937	68,616	136,658	96,171	68,937	903,827
19	95,497	79,412	108,946	68,455	108,946	68,454	68,135	135,701	95,497	68,454	897,500
20	94,829	78,856	108,184	67,976	108,184	67,975	67,658	134,751	94,829	67,975	891,217
21	94,165	78,304	107,427	67,500	107,427	67,499	67,185	133,808	94,165	67,499	884,979
22	93,506	77,756	106,675	67,027	106,675	67,027	66,714	132,872	93,506	67,027	878,784
23	92,851	77,212	105,928	66,558	105,928	66,558	66,247	131,941	92,851	66,558	872,633
24	92,201	76,671	105,186	66,092	105,186	66,092	65,784	131,018	92,201	66,092	866,524
25	91,556	76,135	104,450	65,630	104,450	65,629	65,323	130,101	91,556	65,629	860,458

4. **Stipulated Savings:** When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, Fountain Valley SD and Chevron Energy Solutions may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.
  - a. For the Stipulated Technique, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
5. **Base Energy Rates:** EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each

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Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Report.

The Base Energy Rates are shown in *Table H-1, Retrofit and M&V Technique Matrix*.

The base energy rates shown in *Table H-1* are to be increased each year on a cumulative basis by five percent (5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Year thereafter.

**ATTACHMENT I**  
**LIST OF INCENTIVES**

1. California Solar Initiative:  
<http://www.sce.com/solarleadership/gosolar/california-solar-initiative/default.htm>
  
2. Southern California Edison Customized Solutions Rebate Program:  
<https://www.sce.com/wps/portal/home/business/savings-incentives/energy-efficiency-customized-solutions>
  
3. Southern California Edison Express Solutions Rebate Program:  
<https://www.sce.com/wps/portal/home/business/savings-incentives/express-solutions>

**ATTACHMENT J**  
**MONITORING INSTALLATION SCOPE OF WORK**

Overview of DAS Network Installation & Equipment Requirements

Chevron Energy Solutions will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plant.

***Chevron Energy Solutions DAS Monitoring Installation:***

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with Fountain Valley SD's specifications.
- Test and verify Fountain Valley SD/Facility network connectivity.
  - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Fountain Valley SD/Facility maintenance staff.

***Fountain Valley SD/Facility Responsibilities:***

- Provide four (4) external static IP addresses, subnet mask default gateway, and DNS-information to allow remote access to DAS panel(s).
- Provide network connectivity to each DAS panel location.
- Provide Chevron Energy Solutions five (5) Business Days prior notification of any IP addressing scheme changes or changes made to restrict network access to ensure maximum uptime is maintained.

**ATTACHMENT K  
PREVENTIVE MAINTENANCE**

**EQUIPMENT AND FACILITIES COVERED**

Chevron Energy Solutions will perform Preventive Maintenance Services ("PM Services") as defined in this Attachment K with respect to Generating Facilities being constructed on Fountain Valley SD's property at the following Project Locations:

- Roch Courreges Elementary
- James H. Cox Elementary
- Harry C. Fulton Middle
- Robert Gisler Elementary
- Kazuo Masuda Middle School
- William T. Newland Elementary
- Isojiro Oka Elementary
- Urbain H. Plavan Elementary
- Samuel E. Talbert Middle School
- Hisamatsu Tamura Elementary

**IV. Term**

So long as Fountain Valley SD pays to Chevron Energy Solutions the Annual Maintenance Fee, Chevron Energy Solutions will provide the PM Services, as described herein, up to ten (10) years from the M&V Commencement Date on an annualized basis. At the end of this term, Fountain Valley SD may:

- a. Enter into another agreement with Chevron Energy Solutions to perform PM Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

**V. Annual Maintenance Fee; Reporting**

The Annual Maintenance Fee for the first Measurement Period will be invoiced by Chevron Energy Solutions to Fountain Valley SD in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by Chevron Energy Solutions on the first day of the corresponding Measurement Period. Fountain Valley SD, or its designee, will pay Chevron Energy Solutions such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Unless Fountain Valley SD gives Chevron Energy Solutions prior written notice of its intent to terminate the PM Services, any failure to timely pay the Annual Maintenance Fee in accordance with this Attachment K will be a material default by Fountain Valley SD under the Contract, and Chevron Energy Solutions, in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide PM Services.

Any amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, Chevron Energy Solutions will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to Fountain Valley SD on a quarterly basis.

If Chevron Energy Solutions is no longer the provider of PM Services, Fountain Valley SD's new provider will maintain similar service logs. Chevron Energy Solutions will have reasonable access to inspect service logs to determine that adequate PM Services are being performed.

**VI. Preventive Maintenance Services Provided**

Chevron Energy Solutions will provide the following PM Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.

- b. Testing: Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- c. Monitoring: Monitor system performance on a daily basis.
- d. Cleaning:
  - i. Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
  - ii. Pressure wash PV modules and remove accumulated dust and debris with pressure hose on an annual basis.

**IV. Repair Services**

- a. Covered Equipment: Components of the Generating Facilities installed under this Attachment K include:
  - 1. Inverters
  - 2. Photovoltaic Panels
  - 3. Combiner Boxes
  - 4. Disconnect Switches
  - 5. AC and DC Power Wire
  - 6. Meters integral with Inverters
- b. Exclusions:
  - 1. Array structure
  - 2. Lighting
  - 3. Roofing
  - 4. Paint or finish
  - 5. Concrete
  - 6. Asphalt
  - 7. Bollards
  - 8. Conduit
  - 9. Data acquisition systems
  - 10. Meters
  - 11. Data acquisition communication wire
- c. If a Generating Facility is damaged due to a Force Majeure Event, Fountain Valley SD's negligence, or any other event beyond the control of Chevron Energy Solutions, Chevron Energy Solutions will provide repairs as required to restore the Generating Facilities to normal operating parameters or to replace deteriorated, damaged, parts and equipment. Fountain Valley SD will compensate Chevron Energy Solutions for such repairs/replacement on a time and material basis, with Chevron Energy Solutions providing back-up cost detail for actual, reasonable costs including reimbursable expenses, multiplied by 1.15.
- d. "Repairs" will include any of the following as necessary: Procuring parts or materials, removing damaged or out-of-specifications parts or materials, installing repaired or replacement parts or materials, and testing.

**V. Services And Equipment To Be Covered By Fountain Valley SD**

Chevron Energy Solutions' obligations under this Attachment K are expressly conditioned upon Fountain Valley SD's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to Chevron Energy Solutions:

- a. The Generating Facilities described herein will be made available to Chevron Energy Solutions as of the Contract Effective Date.
- b. Operate and maintain security systems associated with Generating Facilities.
- c. Fountain Valley SD will be responsible for maintenance of all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing Chevron Energy Solutions and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the PM Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing Chevron Energy Solutions and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Chevron Energy Solutions to satisfy its obligations under the Contract, all free of charge to Chevron Energy Solutions.
- f. Fountain Valley SD will be responsible pursuant to Applicable Law for the remediation of any known Hazardous Substances encountered by Chevron Energy Solutions during the performance of the PM Services which Hazardous Substances were not deposited by Chevron Energy Solutions, including any backfill with clean soil as may be reasonably required.

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- g. Fountain Valley SD will insure the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.
- h. Chevron Energy Solutions will have no obligation to provide the PM Services to the extent such provision of PM Services is materially adversely affected by Fountain Valley SD's failure to satisfy the conditions set forth in this Attachment K.

**ATTACHMENT L**  
**STUDENT SAFETY CERTIFICATION**

TO: FOUNTAIN VALLEY SCHOOL DISTRICT

PROJECT: CHEVRON ES CONTRACT # \_\_\_\_\_

I am authorized to certify, and do certify, on behalf of CHEVRON ENERGY SOLUTIONS COMPANY, a Division of Chevron U.S.A. Inc. ("Chevron Energy Solutions"), all of the statements made hereinafter.

EITHER

Chevron Energy Solutions, at its sole expense, shall provide and maintain the following measures to ensure student safety:

1. The installation of a physical barrier at the worksite to limit contact between all Chevron Energy Solutions' employees and personnel, and the employees and personnel of all subcontractors, and any pupils; and,
2. Continual supervision and monitoring of all Chevron Energy Solutions' employees and personnel, and the employees and personnel of all subcontractors, by an employee of Chevron Energy Solutions whom the California Department of Justice has ascertained has not been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

OR:

Chevron Energy Solutions (i) has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to Chevron Energy Solutions' employees and personnel who may have contact with Fountain Valley SD pupils in the course of performance of the Contract, and (ii) has caused its subcontractors to comply with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to the employees and personnel of such subcontractors who may have contact with Fountain Valley SD pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1.

Chevron Energy Solutions certifies that the above information is correct and is in compliance with Education Code section 45122.1 and AB 2102.

WHEREFORE

The undersigned declares, under penalty of perjury according to the laws of the State of California, that the foregoing certification is true and correct to the personal knowledge of the undersigned.

**CHEVRON ENERGY SOLUTIONS COMPANY, a division of Chevron U.S.A. Inc.**

\_\_\_\_\_  
\_\_\_\_\_

*(Print Name And Title of Agent Authorized To Execute This Certification)*

**ATTACHMENT M**  
**CALIFORNIA LABOR CODE SECTIONS**

- 1771 Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.
- 1774 The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.
- 1775 (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
- (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.
- (B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- (iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.
- (C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.
- (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776 (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be

made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1777.5 (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may

take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

1811 The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

1813 The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

1815 Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.



SO: 2012-13/B13-52  
Fountain Valley School District  
Superintendent's Office

MEMORANDUM

TO: Board of Trustees  
FROM: Marc Ecker, Superintendent  
SUBJECT: **Adoption of District Goals for 2013-14**  
DATE: June 7, 2013

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**Background:**

The Fountain Valley School District Board of Trustees reviews and adopts the District's strategic goals on an annual basis. The Board participated in a public study session for the purpose of discussing the District Goals for the 2013-14 year at the regular board meeting held on May 16, 2013.

The 2013-14 proposed goals presented to the board by senior managers reflect, to a degree, the budgetary constraints placed on the District as a result of the funding cuts by Sacramento. The superintendent collaborated with senior management in creating the 2013-14 goals for the Instruction, Human Resources and Business Divisions.

At the conclusion of the study session, the Board reached consensus on the goals as presented to the board by senior managers.

**Recommendation**

It is recommended that the Board of Trustees adopts the attached District Goals for the 2013-14 school year.



Fountain Valley School District

**PROPOSED DISTRICT STRATEGIC GOALS FOR 2013-14**

**INSTRUCTION DIVISION**

**GOAL 1: STANDARDS & ACCOUNTABILITY**

*It is the goal of the Fountain Valley School District to increase our effectiveness in moving all students to proficient or advanced achievement levels through the implementation of a standards-based, data driven instructional program.*

1. The District will continue its efforts to prepare teachers and students for transition to the Common Core State Standards and the new Smarter Balanced assessments in preparation for full implementation in the 2014-2015 school year. Additionally, the District will explore State Board of Education approved supplemental resources to support instruction in the new standards.
2. Principals and teachers will engage in Learning Walks and Professional Learning Communities to examine effective instructional practices to improve student achievement.
3. The District's English Learner (EL) Master Plan, including timelines for implementation of the new ELD standards, will be updated to effectively meet the changing needs of the District's EL student population.

**GOAL 2: TEACHING AND LEARNING**

*It is the goal of the Fountain Valley School District to work collaboratively to improve instructional delivery through the use of research-proven teaching methods that increase the academic achievement of all students.*

1. District and site administrators will continue to support elementary teachers on the effective implementation of flexible small group, differentiated instruction to meet the academic needs of all students.
2. The Co-Teaching model will be utilized at the middle school level to provide instructional support for at-risk students and to ensure access to the core curriculum.

3. District and site administrators will continue to work with middle school teachers on designing instruction that ensures students are authentically and actively engaged in learning.
4. Teachers and students will have increased access to technology as a learning tool to support the development of 21<sup>st</sup> Century Learning Skills and student success with the new Common Core State Standards and Smarter Balanced assessments.
5. The District will pilot an Early Entry Kindergarten program in the 2013-2014 school year.
6. The District music program will be redesigned to align with new legislation reflected in Education Code sections 49010 through 49013. A nonprofit organization will be identified to administer a fee-based instrumental music program for students in grades three through five. As a means of increasing instructional effectiveness, a certificated instrumental music program will be offered to students in grades six through eight during the school day. This step will enable the District to move closer to realizing a long-term goal of providing a certificated music program for students at both the elementary and middle school levels. In addition to the Fountain Valley Singers, the District will also explore avenues for supporting vocal music opportunities for students.

### **GOAL 3: STAFF DEVELOPMENT**

*It is the goal of the Fountain Valley School District to provide professional development for staff that will maximize instructional effectiveness and support student success in all curricular areas.*

1. Teachers and site administrators will be provided with professional development to increase their knowledge and understanding of the Common Core State Standards.
2. Elementary teachers will receive professional development and on-going support in the implementation of small group and differentiated instruction in order to effectively meet the needs of all students, including GATE, English Learners, Special Education, and at-risk students.
3. Professional development opportunities will be offered to increase technology integration in the core curriculum and to support the innovation of teaching and learning.



Fountain Valley School District

**PROPOSED DISTRICT STRATEGIC GOALS FOR 2013-2014**

**HUMAN RESOURCES DIVISION**

**GOAL 4: RECRUITMENT/RETENTION OF HIGHLY QUALIFIED CERTIFICATED STAFF**

*The Fountain Valley School District shall attract and retain teachers and certificated management personnel who possess the talent and potential to assure sustained success.*

1. Continue an ongoing evaluation of the process of teacher and administrator recruitment and selection and implement best practices related to application screening, interviewing and demonstration lessons in an effort to attract, employ and retain highly successful employees.
2. Work with the District Insurance Committee and the collective bargaining units to sustain high quality health care options for employees while addressing the impact of the Affordable Care Act on our district.
3. Expand the use of the Substitute Online Application program to all school sites and train certificated staff and substitutes to utilize the program as a means to increase efficiency and effectiveness.
4. Review and update Certificated job descriptions to ensure they include the essential duties, knowledge and skills necessary in educating students in the 21<sup>st</sup> century.

**GOAL 5: IMPROVING THE EVALUATION PROCESS FOR CERTIFICATED AND CLASSIFIED STAFF**

*The Fountain Valley School District will develop an effective process to assist managers and administrators in supervising employees.*

1. Establish specific timelines, expectations and actions for principals in regards to the retention of first and second year teachers and provide ongoing guidance and support.
2. Provide training and support to site administrators and supervisors regarding policies and procedures related to certificated and classified employee evaluation

and discipline, to ensure fair and consistent practices designed to support employee performance, professional growth and improvement.

3. Stay abreast of the progress of the California Office to Reform Education (CORE) federal waiver from NCLB, and the changes in state and federal guidelines regarding teacher evaluations. Explore the current evaluation process for permanent teachers, and work collaboratively with Fountain Valley Education Association (FVEA) engaging in discussions surrounding ideas that will result in a high quality teacher evaluation process.

DRAFT



Fountain Valley School District

**PROPOSED DISTRICT STRATEGIC GOALS FOR 2013-14**

**BUSINESS DIVISION**

**GOAL 6: ASSETS MANAGEMENT**

*The Fountain Valley School District will continue to develop a strategy for increasing district revenue through disposition of surplus property and investment of sales proceeds. Facilities, furniture and equipment will continue to be maintained and improved in order to provide the best possible environment for student learning, effective instruction and staff efficiency.*

1. Increase occupancy at Crossroads building from 55% to 70%. Increase tenant occupancy at District Office building from 50% to 70%.
2. Support technology and infrastructure improvements by identifying and allocating support in this area, as the budget allows.
3. Continue process of sale of the Lamb School and lease of Moiola School surplus sites.
4. Continue to maintain high standards and service levels in the Grounds, Operations, Transportation and Maintenance Departments.

**GOAL 7: DISTRICT FISCAL RESOURCES**

*The Fountain Valley School District will manage all of the District's fiscal resources in a prudent manner to maintain a sound financial position in order to support instruction and learning.*

1. Continue to monitor and review all expenditures in order to fully insure all the adopted budget reductions are fully realized in order to maintain the solvency of the District, while maximizing resources available to support student learning, employee compensation and maintenance of District assets.
2. Monitor and manage the District's cash flow position in order to minimize the impact of the State's budget and cash flow problems on the District, thereby maximizing investment return and minimizing potential interest costs.
3. Monitor all funds to maintain self-sufficiency and avoid the need for General Fund support.

4. Work with Governing Board to formalize intentions for proceeds from sale of surplus sites (Fund 40), including use of funds, investment policies and use of earnings.
5. Facilitate expanded Energy Reduction Program including installation of solar and other cost reduction equipment, maintenance of energy education approach, monitor and reporting of intended savings.

DRAFT



SO: 2012-13/B13-53  
Fountain Valley School District  
Superintendent's Office

MEMORANDUM

TO: Board of Trustees  
FROM: Marc Ecker, Superintendent  
SUBJECT: **Adoption of Board Interests for 2011-12**  
DATE: June 7, 2013

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**Background:**

At the regular Board meeting held April 16, 2013, the Board participated in a public study session for the purpose of discussing its Board Interests for the 2013-14 year. Below are the interests discussed during this session.

**Board Interests 2013-14**

1. The Board of Trustees is interested in advancing the development of 21st Century Learning Skills by providing students and teachers with increased access to technologies that will expand teaching and learning. Effective integration of technology will extend the limits of information for students and teachers beyond the walls of the classroom, the material in a textbook and the knowledge of one individual.
2. The Board of Trustees wishes to raise the school district's profile through increased media presence and community involvement which will manifest itself in heightened recognition by the business sector and better educated constituents as to the value of the Fountain Valley School District.
3. The Board of Trustees is interested in exploring a Saturday School program that would provide services to students who have high absentee rates during the year while raising additional funds for the school district.
4. The Board of Trustees is interested in becoming its own Professional Learning Community and to explore and implement activities such as professional reading and the engagement in collaborative training on key elements of board effectiveness.

**Recommendation:**

It is recommended that the Board of Trustees adopts the above Board Interests for the 2013-14 school year.

Fountain Valley School District  
Superintendent's Office

**REGULAR MEETING OF THE BOARD OF TRUSTEES**

10055 Slater Avenue  
Fountain Valley, CA 92708

**May 16, 2013**

**MINUTES**

President Crandall called the regular meeting of the Board of Trustees to order at 6:00pm.

CALL TO ORDER

The following board members were present:

ROLL CALL

Sandra Crandall	President
Jimmy Templin	President Pro Tem
Ian Collins	Member
Jeanne Galindo	Member

The following board member was absent:  
Judith Edwards Clerk

**Motion:** Mr. Collins moved to approve the meeting agenda. AGENDA APPROVAL

Second: Mrs. Galindo

Vote: 4-0

There were no requests to address the Board prior to closed session.

PUBLIC COMMENTS

Mrs. Crandall announced that the Board would retire into Closed Session. Action was anticipated. The following would be addressed:

CLOSED SESSION

- Personnel Matters: *Government Code 54957 and 54957.1*  
Appointment/Assignment/Promotion of employees; employee discipline/dismissal/release; evaluation of employee performance; complaints/charges against an employee; other personnel matters.
- Pupil Personnel: *Education Code 48912(b) and 48918(c)*  
Student Expulsion or other disciplinary matters
- Public Employee Performance Evaluation: *Government*

*Code Section 54957 & 54957.1*

The board will meet in closed session to discuss the annual performance evaluation of the superintendent.

The public portion of the meeting resumed at 7:00pm

Mr. Templin made the following Closed Session Announcement:

**CLOSED SESSION  
ANNOUNCEMENT**

“In closed session, the governing board took action by a vote of 4 to 0 to suspend the expulsion of student #9144604091 and transfer them to their school of residence or place them into an independent study program through the remainder of the 2012-2013 school year.”

Members of Boy Scouts Pack 455 led the Pledge of Allegiance

**PLEDGE OF  
ALLEGIANCE**

**SPECIAL PRESENTATIONS**

It is an interest of the Board of Trustees to recognize students who display high achievement, improvement or extraordinary effort. The Board recognized outstanding students from both Gisler and Courreges Schools. From Gisler School, the Board recognized Amari Cade (K), Samantha Fujimara Romo and Samuel Fujimara Romo (1<sup>st</sup>), Talia Lemmons (2<sup>nd</sup>), Jasper Ziebarth (3<sup>rd</sup>), Jay Conway (4<sup>th</sup>), and Tiana Pham (5<sup>th</sup>). Principal Erin Bains joined parents and staff members in celebrating these students and their accomplishments this year. From Courreges School, the Board recognized Lola Korhonen (K), Mason Dahl (1<sup>st</sup>), Devin Pham (2<sup>nd</sup>), Brooke Westrup (3<sup>rd</sup>), John McKeever (4<sup>th</sup>), and Ashley Consoli (5<sup>th</sup>). Principal Chris Christensen joined parents and staff members in celebrating these students and their accomplishments this year.

**RECOGNITION OF  
GISLER AND  
COURREGES STUDENTS**

It is an interest of the Board of Trustees to recognize outstanding parent volunteers who give generously of their time and talents to our schools. From Gisler School, the Board recognized and thanked Cathy Harris and Donna Wilson. Principal Erin Bains joined staff and members of the PTO in thanking these parents for all that they do for Gisler School. From Courreges School, the Board recognized and thanked John and CC Nelson. Principal Chris Christensen joined staff and members of the PTA in thanking these parents for all that they do for Courreges School.

**RECOGNITION OF  
GISLER AND  
COURREGES PARENT  
VOLUNTEERS**

Through a trip sponsored by the American Education Federation, a small delegation from the Fountain Valley School District had

**CHINA DELEGATION  
PRESENTATION**

the opportunity to visit three schools in three cities in China over the span of one week in April 2013. Principal Chris Christensen was a member of this delegation and presented for the Board a review of the visit and the opportunities encountered by the delegation to discuss the similarities and differences in our teaching techniques and strategies.

The Fountain Valley Educational Foundation awarded nearly \$6,500 in teacher grants for various instructional materials. The grants were presented to 17 teacher recipients this evening by Foundation President Nicola Weiss and members of the Foundation Board.

**PRESENTATION OF 2013-14 EDUCATIONAL FOUNDATION TEACHER GRANTS**

### **STUDY SESSION**

President Crandall opened the study session. Each of the assistant superintendents reviewed the proposed goals and included strategies for their department. Regarding the proposed instructional goals, Mrs. Crandall noted that they are rigorous and manageable goals, well aligned with the direction of the district. Mrs. Crandall confirmed consensus amongst the board regarding the instructional goals, noting that the board will not take action to adopt these goals until June. Regarding the personal proposed goals, Mrs. Galindo asked the retention rate of our first year teachers. Mrs. Abdel noted that we have a high rate with 90% returning after their first year. For those that do not return, it is because they do not meet the standards. Dr. Ecker explained that for first and second year teachers there is a support network for them in addition to a strict timeline by which site administrators with concerns of a first or second-year teacher's instructional abilities have the opportunity to meet with Mrs. Abdel and develop a plan to get them to a place that meets our standards. Mrs. Abdel noted that each probationary teacher is provided a BTSA mentor and our goal is to provide them support and encourage growth. Mrs. Crandall noted that the goals are focused, with a lot of fluid areas being kept track of; she noted as well that evaluation procedures and support for administrators are topics being looked at nationwide and she is happy to see these included. She confirmed consensus from the board on these goals as presented. The board also reached consensus on the Business goals as presented by Mr. McMahon

**STUDY SESSION ON 2013-14 DISTRICT GOALS**

### **PUBLIC HEARING**

A public hearing was held for the purpose of receiving public comment on the Tier III Categorical Program. Public input was

**PUBLIC HEARING FOR TIER III CATEGORICAL**

welcomed. There were no requests to address the Board and the hearing was closed.

**PROGRAM FLEXIBILITY  
TRANSFERS**

**STAFF REPORTS AND PRESENTATIONS**

Mrs. Crandall announced that the Board of Trustees has received notification of the upcoming Public Hearing on the Personnel Commission’s proposed budget for 2013-14. The Public Hearing shall be held on June 27, 2013 at 5:00pm. Public input will be welcomed.

**ANNOUNCEMENT OF  
PUBLIC HEARING FOR  
PERSONNEL  
COMMISSION BUDGET  
(WRITTEN ONLY)**

Assistant Superintendent, Business, Stephen McMahon presented an update for the Board of Trustees on the Energy Savings Program with Chevron Energy Solutions and the community outreach meeting planned for June 6<sup>th</sup> at 7pm at the District Office. Mr. McMahon noted that the City was very helpful in reaching the community and with their help we will be able to mail notice of the community outreach to all homes within a 750 feet radius around each school, in addition to newspaper advertisements and information distributed through our sites.

**ENERGY SAVINGS  
PROGRAM UPDATE  
(WRITTEN AND ORAL)**

**BOARD REPORTS AND COMMUNICATIONS**

Mr. Templin enjoyed the Monster Concert as well as Open House at Courreges. He noted how impressed he is with the apps available and being used by our teachers. He also attended the State SELPA where new apps were also discussed. He noted his excitement for our district and our pursuit of technology.

**BOARD REPORTS AND  
COMMUNICATIONS**

Mr. Collins enjoyed the OCSBA dinner, Open House at Gisler and the Talbert 5K Fun Run. He also enjoyed the Monster Concert, was a Plavan Jog-a-thon participant, attended the Cox PTO meeting, the Fountain Valley Chamber mixer, and visited Sacramento with Mrs. Crandall to see Dr. Ecker sworn in as ACSA President. He enjoyed Cara Robinson’s recognition at ACSA’s Celebration of Excellence as Middle School Principal of the Year. He also enjoyed the Rotary Teacher of the Year breakfast, the Mayor’s Breakfast, and the certificated retirement recognition.

Mrs. Galindo enjoyed Open House at Plavan and CSBA’s Legislative Action Day.

Mrs. Crandall congratulated Cara Robinson on her well-deserved recognition and to Dr. Ecker on being sworn in as President of ACSA. She enjoyed CSBA’s Legislative Action Day, Cox’s

Open House, the Talbert Pancake Breakfast and the Career Exploration Day coordinated by Vital Link, the OCSBA dinner, the Vocal Music Concert, the Rotary Teacher of the Year Recognition, the certificated teacher retirement recognition, the Education Foundation grant committee meeting, the monthly meeting with the six local school board presidents, the cabinet meeting for this agenda, the SOKA University International Festival, and the Governmental Officials Prayer Breakfast. She thanked all of the trustees for their service this month.

**PUBLIC COMMENTS**

There were four requests to address the Board regarding the Common Core.

**PUBLIC COMMENTS**

**LEGISLATIVE SESSION**

**Motion:** Mr. Collins moved to approve Authorization to Bid for Modular Classrooms and Installation at Talbert Middle School

**AUTHORIZATION TO BID FOR MODULAR CLASSROOMS AND INSTALLATION AT TALBERT MIDDLE SCHOOL**

Second: Mrs. Galindo

Vote: 4-0

Mrs. Crandall requested that Item 10-G Approval of Intel-Assess as Provider of Assessment Program be pulled for separate vote.

**CONSENT CALENDAR/ ROUTINE ITEMS OF BUSINESS**

**Motion:** Mr. Templin moved to approve the Consent Calendar with exception of Item 10-G.

Second: Mr. Collins

Vote: 4-0

**Motion:** Mrs. Crandall moved to table Item 10-G Approval of Intel-Assess as Provider of Assessment Program to a future meeting date.

Second: Mr. Collins

Mr. Collins noted that we had a quite a shock when piloting the math assessment, and so it makes sense to be sure that we have the correct partner.

Vote: 4-0

The Consent Calendar included:

- Board Meeting Minutes from the April 16<sup>th</sup> meeting
- Personnel Items (Employment Functions, Workshops/Conferences, and Consultants)
- Donations
- Warrants
- Purchase Order Listing
- Budget Adjustments
- Notice of Layoff for Classified Positions
- Resolution 2013-22 Tier III Categorical Program Flexibility Transfers
- Rejection of Claim #480166
- Resolution 2013-23 Right to Reduce Management Team Work Year and Salary Compensation for the 2013-14 Fiscal Year
- Resolution 2013-24 Right to Negotiate the Reduction in Work Year and Salary for Certificated Team Members and Classified Team Members for the 2013-14 Fiscal Year
- Non-Public Agency Contracts (Board Members Only)

Non-Public School/Agency	100% Contract Cost	Effective Dates
Cornerstone Therapies	\$960	5/1/2013-6/30/2013
Cornerstone Therapies	\$960	4/17/2013-6/30/2013
Jose D. Rios, MS	\$2700	4/1/2013-6/30/2013
Cornerstone Therapies	\$300	2/26/2013-6/30/2013
Cornerstone Therapies	\$5100	7/1/2012-7/31/2012
Cornerstone Therapies	\$960	1/15/2013-6/30/2013
Therapeutic Education Centers	\$367.50	11/13/2012-12/13/2012
Speech & Language Dev. Center	\$31,856	9/24/2012-6/30/2013
Speech & Language Dev. Center	\$17,136	7/1/2012-6/30/2013

**NEW ITEMS OF BUSINESS**

Mrs. Galindo Requested a report on the pilots currently going on with BYOD and the Smarter Balanced Assessments. Dr. Ecker noted that if the Board agrees, we would be happy to bring a staff report and a perspective as to how the Smarter Balanced Assessment pilot and BYOD pilot went. The Board agreed.

Dr. Ecker Thanked senior managers for their work on the goals and the board’s work in tonight’s study session. He noted that the goals are indeed focused and specific to this coming year. He noted that we will bring back the goals along with the board interests for adoption at the first

meeting in June.

Dr. Ecker            Thanked Joe Hastie and Gregg Millett for their continued work with Mr. McMahon on the Chevron Energy program.

Dr. Ecker            Congratulated Cara Robinson on her recognition as ACSA's Middle School Administrator of the Year.

## **CLOSED SESSION**

Mrs. Crandall announced that the Board would retire into a second Closed Session. No action was anticipated. The following would be addressed:

- Personnel Matters: *Government Code 54957 and 54957.1*  
Appointment/Assignment/Promotion of employees; employee discipline/dismissal/release; evaluation of employee performance; complaints/charges against an employee; other personnel matters.
- Pupil Personnel: *Education Code 48912(b) and 48918(c)*  
Student Expulsion or other disciplinary matters
- Public Employee Performance Evaluation: *Government Code Section 54957 & 54957.1*  
The board will meet in closed session to discuss the annual performance evaluation of the superintendent.

## **ADJOURNMENT**

**Motion:**            Mr. Templin moved to adjourn the meeting at 10:46pm.

Second:            Mrs. Crandall

Vote:                Unanimously approved

/rl

**FOUNTAIN VALLEY SCHOOL DISTRICT  
PERSONNEL ITEMS FOR APPROVAL  
June 13, 2013**

**1.0 EMPLOYMENT FUNCTIONS:**

1.1 ASSISTANT SUPERINTENDENT, PERSONNEL REQUESTS APPROVAL OF THE FOLLOWING CERTIFICATED LEAVES OF ABSENCE:

	<u>EMPLOYEE</u>	<u>LOCATION</u>	<u>ASSIGNMENT</u>	<u>REASON</u>	<u>EFFECTIVE</u>
1.1.1	Brekke, Jody	Courreges	Teacher	Maternity	05/20/2013
1.1.2	Shute, Jaymee	Courreges	Teacher	Child Care	2013-2014 School Year
1.1.3	Francis, Shereen	Fulton	Teacher	Child Care	2013-2014 School Year
1.1.4	Iorga, Susie	Masuda	Teacher	Child Care	2013-2014 School Year

1.2. ASSISTANT SUPERINTENDENT, PERSONNEL REQUESTS APPROVAL OF THE MODIFIED DAYS AND SPORTS TOURNAMENT CALENDARS FOR 2013- 2014 SCHOOL YEAR (see attachments).

1.3 ASSISTANT SUPERINTENDENT, PERSONNEL REQUESTS APPROVAL OF THE CERTIFICATED MANAGEMENT SALARY SCHEDULE FOR 2013-2014 SCHOOL YEAR EFFECTIVE 07/01/2013 (see attachment).

**2.0 EMPLOYMENT FUNCTIONS:**

2.1 ASSISTANT SUPERINTENDENT, PERSONNEL REQUESTS APPROVAL OF THE FOLLOWING CLASSIFIED LEAVES OF ABSENCE:

	<u>EMPLOYEE</u>	<u>LOCATION</u>	<u>ASSIGNMENT</u>	<u>REASON</u>	<u>EFFECTIVE</u>
2.1.1	Covington, Tiffany	Plavan	Lead ESP Instructor	Medical	4/10/2013
2.1.2	Camacho, Betsy	Cox	Instructional Asst.	Medical	4/25/2013

2.2 ASSISTANT SUPERINTENDENT , PERSONNEL HAS ACCEPTED THE RESIGNATION OF THE FOLLOWING CLASSIFIED EMPLOYEE:

	<u>EMPLOYEE</u>	<u>ASSIGNMENT</u>	<u>LOCATION</u>	<u>EFFECTIVE</u>
2.2.1	Jooste, Yolandi	IA Lead DTT	Newland	5/24/2013

2.3 ASSISTANT SUPERINTENDENT, PERSONNEL REQUESTS APPROVAL OF THE FOLLOWING LIMITED TERM 2013 SPECIAL EDUCATION EXTENDED SCHOOL YEAR CLASSIFIED EMPLOYEES AT NEWLAND SCHOOL, FROM 6/24/13 – 8/23/13:

	<u>EMPLOYEE</u>	<u>ASSIGNMENT</u>		<u>EMPLOYEE</u>	<u>ASSIGNMENT</u>
2.3.1	O'Toole, Sandy	School Admin. Asst.	2.3.26	DiCorpo, Louise	IA DTT
2.3.2	Wagoner, Cindy	IA Special Ed.	2.3.27	Skaar, Betsy	IA DTT
2.3.3	Nguyen, Kelly	IA Special Ed.	2.3.28	Garcia, Debbie	IA DTT
2.3.4	Lloyd, Vicki	IA SH/PH	2.3.29	Montagne, Renee	IA DTT
2.3.5	Garrison, Rachel	IA SH/PH	2.3.30	Valdez, Taylor	IA DTT
2.3.6	Castaneda, Traci	IA SH/PH	2.3.31	Nielsen, Candace	IA DTT
2.3.7	Knight, Sharon	IA SH/PH	2.3.32	Nasab, Betty	IA DTT
2.3.8	Doan, Lan	IA SH/PH	2.3.33	Plemons, Lori	IA DTT
2.3.9	Clouthier, David	IA SH/PH	2.3.34	Walker, Sherri	IA DTT
2.3.10	York, James	Custodian	2.3.35	Perkins, Robin	IA DTT
2.3.11	Escala, Cathy	FSW	2.3.36	Curoso, Sheree	IA DTT
2.3.12	Kulungian, Karen	SLPA	2.3.37	Gonzalez, Danielle	IA DTT
2.3.13	Fujiwara-Winge, Julie	SLPA	2.3.38	Gagnon, Marina	IA DTT
2.3.14	Talley, Jeremy	IA DTT	2.3.39	Reither, Marie	IA DTT
2.3.15	Campo, Michael	IA DTT	2.3.40	Sudgen-Davis, Jane	IA DTT
2.3.16	Shaw, Rosie	Bus Driver	2.3.41	Linares, Lisa	IA DTT
2.3.17	Davis, Linda	Bus Driver	2.3.42	Musacchio, Kathleen	IA DTT
2.3.18	Bauer, Gerrel	Bus Driver	2.3.43	Gulla, Brad	Bus Driver
2.3.19	Gonzalez-Martinez, Ramiro	Bus Driver	2.3.44	Rivas, Sergio	Bus Driver
2.3.20	Naile, Barbara	Preschool Instructor	2.3.45	Cuevas, Javier	Bus Driver
2.3.21	Cooper, Kim	Preschool Instructor	2.3.46	Rico, Monique	Preschool Instructor
2.3.22	Barber, Roxanne	Preschool Instructor	2.3.47	Presson, Juli	Preschool Instructor
2.3.23	Bonifay, Rena	Preschool Instructor	2.3.48	Russo, Donna	Preschool Aide
2.3.24	Kraus, Barbara	Preschool Aide	2.3.49	Crooks, Sharon	Preschool Aide
2.3.25	Vo, Amanda	Preschool Aide	2.3.50	Hoang, Anh	Preschool Aide

**FOUNTAIN VALLEY SCHOOL DISTRICT**  
**CERTIFICATED MANAGEMENT SALARY SCHEDULE**

**2013-2014**

<b>RANGE</b>	<b>STEP A</b>	<b>STEP B</b>	<b>STEP C</b>	<b>STEP D</b>	<b>STEP E</b>	<b>STEP F</b>
<b>15</b>	<b>89,001</b>	<b>93,451</b>	<b>98,123</b>	<b>103,029</b>	<b>108,180</b>	<b>113,590</b>
<b>16</b>	<b>93,388</b>	<b>98,057</b>	<b>102,961</b>	<b>108,109</b>	<b>113,513</b>	<b>119,190</b>
<b>17</b>	<b>97,036</b>	<b>101,889</b>	<b>106,983</b>	<b>112,332</b>	<b>117,949</b>	<b>123,846</b>
<b>18</b>	<b>99,403</b>	<b>104,372</b>	<b>109,592</b>	<b>115,071</b>	<b>120,825</b>	<b>126,866</b>
<b>18A</b>	<b>100,620</b>	<b>105,651</b>	<b>110,933</b>	<b>116,481</b>	<b>122,303</b>	<b>128,419</b>
<b>19</b>	<b>105,651</b>	<b>110,933</b>	<b>116,481</b>	<b>122,303</b>	<b>128,419</b>	<b>134,840</b>

**RANGE 15     Assistant Principal; Science Coordinator, Program Specialist, Autism Specialist (210 Days)**

**RANGE 17     Elementary Principal (210 Days)**

**RANGE 18     Middle School Principal (215 Days)**

**RANGE 18A    Director, Support Services; Director, Assessment/Accountability (246 Days)**

**RANGE 19     Executive Director, Personnel, (246 Days)**

**NOTE:**            Step advancement is contingent upon serving at least 50% of the previous year. An additional \$3,000 on an annual basis is awarded to an earned doctorate. The 245 days include a maximum of 24 vacation days. Following the 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 25<sup>th</sup>, 30<sup>th</sup> and 35<sup>th</sup> year of employment (including outside and in the District), a cumulative stipend in the amount of \$500, not to exceed \$3,500 in the 35<sup>th</sup> year is awarded.

Board Approved: \_\_\_\_\_  
 Effective Date:    07-01-2013

# FOUNTAIN VALLEY SCHOOL DISTRICT

## PERSONNEL

TO: ALL CERTIFICATED EMPLOYEES  
FROM: Cathie Abdel, Assistant Superintendent, Personnel  
SUBJECT: **2013-2014 Calendar of Modified Days and Staff Development Days**  
DATE: May 6, 2013

---

Please be advised of the following designations for modified day for the **2013-14** School Year.

### August

29 Staff Development

### September

5 Teacher Planning  
12 Site Planning  
19 Back-to-School K-5/Teacher Planning 6-8  
26 Back-to-School 6-8/Teacher Planning K-5

### February

6 Teacher Planning  
13 Site Planning  
20 Teacher Planning  
27 Site Planning

### October

3 Site Planning  
10 Teacher Planning/Special Ed  
17 Teacher Planning  
24 Site Planning  
28-31 Parent Conferences

### March

6 Site Planning/Special Ed  
13 Teacher Planning  
20 Open House 6-8/Teacher Planning K-5  
26-28 Parent Conferences

### November

1 Parent Conferences  
7 Site Planning  
14 Teacher Planning  
21 Site Planning

### April

3 Site Planning  
10 Open House K-5/Teacher Planning 6-8  
24 Teacher Planning

### December

5 Site Planning  
12 Teacher Planning  
19 Teacher Planning

### May

1 Site Planning  
8 Teacher Planning  
15 Site Planning  
22 Teacher Planning/Special Ed  
27 FVEA Association Modified Day  
29 Site Planning

### January

9 Site Planning  
16 Teacher Planning  
23 Site Planning/Special Ed  
30 Teacher Planning

### June

5 Teacher Planning  
12 Site Planning  
16-17 Teacher Planning

### **Teacher Planning**

Teacher remains on campus for the purpose of lesson planning, classroom management duties, progress/report card preparation, etc. Grade level and/or department meetings may be held when necessary.

### **Site Planning**

Principal/District staff development or site meetings.

**Week of October 21<sup>st</sup> Send progress reports home.**  
**Week of December 16<sup>th</sup> – Send report cards home.**  
**Week of February 10<sup>th</sup> – Send progress reports home.**  
**Week of March 17<sup>th</sup> – Send report cards home.**  
**Week of May 12<sup>th</sup> –Send progress reports home.**  
**June 17<sup>th</sup> -K-5 & 6-8 Report cards send home.**

Board Approved: \_\_\_\_\_

# FOUNTAIN VALLEY SCHOOL DISTRICT

## PERSONNEL

TO: All Schools  
FROM: Cathie Abdel, Superintendent, Personnel  
SUBJECT: **Sport Tournament Dates**  
DATE: May 22, 2013

---

Please note the tournament dates for the *2013-2014* School Year. Those attending require many substitutes and buses. As you plan school calendars, avoid scheduling activities, which require substitutes on these days.

<u>DATE</u>	<u>ACTIVITY</u>	<u>LOCATION</u>
Wednesday, 11/13/2013	SOCCER	TALBERT MIDDLE SCHOOL
Wednesday, 01/22/2014	BASKETBALL	MASUDA MIDDLE SCHOOL
Wednesday, 04/09/2014	VOLLEYBALL	FULTON MIDDLE SCHOOL
Wednesday, 06/04/2014	TRACK and FIELD	FULTON MIDDLE SCHOOL

*Board Approved: June 13, 2013*

**FOUNTAIN VALLEY SCHOOL DISTRICT  
PERSONNEL ITEMS FOR APPROVAL**

June 13, 2013

<i><b>INSTRUCTION</b></i>
---------------------------

**3.0 CONFERENCE/WORKSHOP ATTENDANCE**

	<u>NAME</u>	<u>ATTENDING</u>	<u>LOCATION</u>	<u>COST</u>	<u>BUDGET</u>	<u>DATE</u>
3.1	DANIELS, Katie (Tam) LOPEZ, Heather (Tam) (C & I)	Summer GLAD Academy through OCDE	Huntington Beach Teacher Created Materials	\$500/ each	01-030-1055-5210	7-15-13 through 7-18-13
3.2	O'MALLEY, Jessica (Cox) KITAHARA, Amanda (NE) (C & I)	Thinking Maps Trainer of Trainers	OCDE, Board Room	\$1,100/ each	01-030-8255-5210	7-8 thru 7-10-13 & 10-8 thru 10-9-13
3.3	BONIFAY, Rena COOPER, Kim NAILE, Barbara RICO, Monique (State Preschool)	Preschool GLAD Training	OCDE	\$750/ each	01-026-9275-5210	10-29 thru 11-2-12 & 5-13 thru 5-17-13

**REASON FOR LATE SUBMITTAL: School Readiness clerical error, as request was not submitted for approval at prior Board meetings.**

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

All donations to the district must be officially accepted by the Fountain Valley School District Board of Trustees inasmuch as their acceptance may involve an expenditure of district funds for installation, use, and/or maintenance. Before any donation is supplied or purchased by your organization, or formally accepted for a school, the following information is requested on this form. Upon site/document approval, a copy of the form shall be presented to Business Services or Instruction for further consideration and approval in accordance with Board Policy 3290, Donations to School District.

SCHOOL RECEIVING DONATION: Cox Elementary

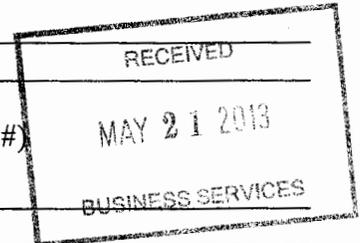
NAME OF DONOR: Wells Fargo Foundation

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)

# 1049156      \$ 100.00

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 01032 0000 -8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100132894310

INTENDED USE: (State how this will be used ) Technology

REVIEWED: [Signature]      APPROVED/DISAPPROVED: 5/21/13  
Principal/Department Head      Date

REVIEWED: [Signature]      APPROVED/DISAPPROVED: 5/21/13  
Assistant Superintendent      Date  
Business/Administration

REVIEWED: \_\_\_\_\_      APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent      Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
**DONATION ACCEPTANCE FORM**

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: Cox Elementary

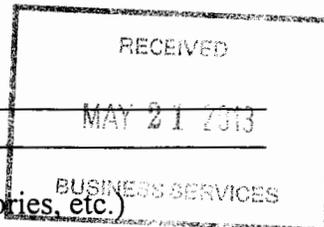
NAME OF DONOR: United Way

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)

#55906      \$ 500.00

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 010320000 -8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100132894310

INTENDED USE: (State how this will be used ) classroom enhancement

REVIEWED: [Signature]      APPROVED/DISAPPROVED: 5-21-13  
Principal/Department Head      Date

REVIEWED: [Signature]      APPROVED/DISAPPROVED: 5/21/13  
Assistant Superintendent      Date  
Business/Administration

REVIEWED: \_\_\_\_\_      APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent      Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
**DONATION ACCEPTANCE FORM**

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: Cox Elementary

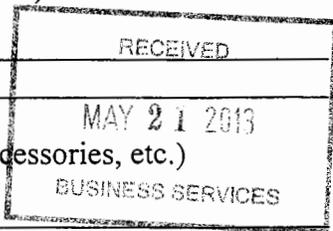
NAME OF DONOR: Cox PTO

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)

# 4197      \$ 15.76

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 01 032 0000 -8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100132894310

INTENDED USE: (State how this will be used) classroom enhancement jog-a-thon supplies

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5-21-13  
Principal/Department Head Date

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5/21/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
**DONATION ACCEPTANCE FORM**

Federal ID# 95-6001370

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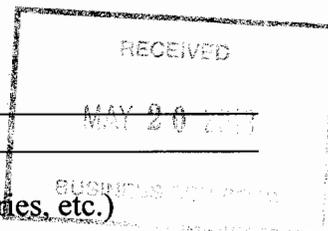
SCHOOL RECEIVING DONATION: Gisler

NAME OF DONOR: BP Fabric of America Fund

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)  
\$300.00

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)  
na

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)  
na



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)  
na

REVENUE ACCT: 01 031 0000 - 8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 01 001 3189 - 4310

INTENDED USE: (State how this will be used ) Instructional Supplies

REVIEWED: *C. Cravin*  
Principal/Department Head

APPROVED/DISAPPROVED: 5-02-13  
Date

REVIEWED: *[Signature]*  
Assistant Superintendent  
Business/Administration

APPROVED/DISAPPROVED: 5/20/13  
Date

REVIEWED: \_\_\_\_\_  
Assistant Superintendent  
Instruction

APPROVED/DISAPPROVED: \_\_\_\_\_  
Date

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: Masuda

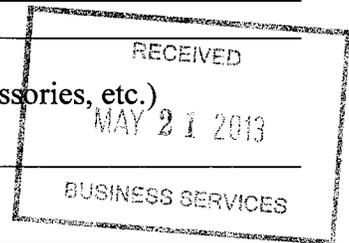
NAME OF DONOR: Masuda PTA

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)  
\$1666.77

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)  
N/A

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)  
N/A

ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)  
N/A



REVENUE ACCT: 010144989 -8699  
EXPENDITURE ACCT(S) FOR BUDGET INCREASE: See attached spreadsheet

INTENDED USE: (State how this will be used) Pay Cheer and Softball Coach stipends and pay for After school clubs at Masuda

REVIEWED: [Signature] APPROVED/DISAPPROVED: APPROVED 5/20/13  
Principal/Department Head Date

REVIEWED: [Signature] APPROVED/DISAPPROVED: APPROVED 5/20/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: PLAVAN Elementary

NAME OF DONOR: Misc. Parent Donations - Plavan Auction

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)  
5 parent vs total equals \$245.00

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 014000000-8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100140894310

INTENDED USE: (State how this will be used ) Instructional Supplies

REVIEWED: Julie M. Ballesteros APPROVED/DISAPPROVED: 5-16-2013  
Principal/Department Head Date

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5/17/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: PLAVAN Elementary

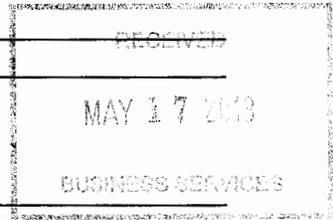
NAME OF DONOR: Tom Vos Taekwondo

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)

✓ # 1057 in the amount of \$100.00  
Donation back to Plavan for classes taught.

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 014000000 -8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100140894310

INTENDED USE: (State how this will be used ) Copy paper

REVIEWED: Julie M. Ballerew (APPROVED/DISAPPROVED): 5/16/2013  
Principal/Department Head Date

REVIEWED: [Signature] (APPROVED/DISAPPROVED): 5/17/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent Date  
Instruction

BOARD APPROVAL DATE: 6/13/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: PLAVEN Elementary

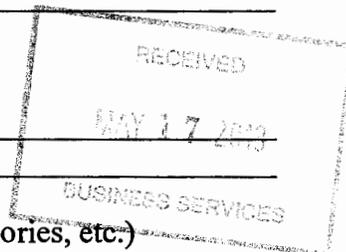
NAME OF DONOR: PLAVEN PTO

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)

PTO v 7081 in the amount of \$19.50  
Reimbursement from Robertson

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)



ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)

REVENUE ACCT: 014 000 000 -8699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100140894310

INTENDED USE: (State how this will be used) Instructional supplies

REVIEWED: Julie M. Ballesteros APPROVED/DISAPPROVED: 5/16/2013  
Principal/Department Head Date

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5/17/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Assistant Superintendent Date  
Instruction

BOARD APPROVAL DATE: 6/3/13

FOUNTAIN VALLEY SCHOOL DISTRICT  
DONATION ACCEPTANCE FORM

Federal ID# 95-6001370

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SCHOOL RECEIVING DONATION: Tamura

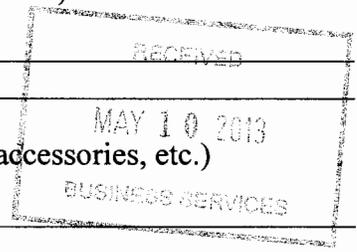
NAME OF DONOR: United Way Silicon Valley from Tamura Parent: Barbara Wittick

DESCRIPTION OF DONATION OR CASH DONATION: (Include name and address of manufacturer or vendor, age and condition of item if not new, approximate present value.)  
\$350 Check #56077

ESTIMATED INSTALLATION COST: (Note software needs, special wiring required, additional components needed, transportation, etc.)

INVENTORY INFORMATION: (Include quantity, brand name, model #, serial #)

ESTIMATED COST OF ANNUAL UPKEEP: (Electricity, special supplies, accessories, etc.)



REVENUE ACCT: 0100110108699

EXPENDITURE ACCT(S) FOR BUDGET INCREASE: 0100110104320

INTENDED USE: (State how this will be used )  
To be used to purchase Computer Supplies for Computer Lab and /or Mobile Lab

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5/09/13  
Principal/Department Head Date

REVIEWED: [Signature] APPROVED/DISAPPROVED: 5/14/13  
Assistant Superintendent Date  
Business/Administration

REVIEWED: \_\_\_\_\_ APPROVED/DISAPPROVED: \_\_\_\_\_  
Director, Technology/Media Date

BOARD APPROVAL DATE: 6/13/13

**FOUNTAIN VALLEY SCHOOL DISTRICT**

TO: STEVE McMAHON  
FROM: MARTHA LOCKWOOD  
SUBJECT: WARRANT LISTING BOARD MEETING – JUNE 13, 2013  
DATES 5/08/13 – 6/04/13  
WARRANT NUMBERS 61878 - 62255

01 GENERAL	\$	330,145.99
12 CHILD DEVELOPMENT	\$	15,884.36
13 CAFETERIA	\$	54,335.62
14 DEFERRED MAINTENANCE	\$	0
25 CAPITAL FACILITIES	\$	5,200.00
35 SCHOOL FACILITIES	\$	0
40 SPECIAL RESERVE	\$	9,477.56
68 WORKERS COMPENSATION	\$	58,855.34
69 INSURANCE	\$	319,612.32
TOTAL	\$	<b>793,511.19</b>

**FOUNTAIN VALLEY SD**  
**PURCHASE ORDER DETAIL REPORT**  
**BOARD OF TRUSTEES MEETING 06/13/2013**

**FROM 05/08/2013 TO 05/31/2013**

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>ACCOUNT AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20M4233	CITY OF FOUNTAIN VALLEY	25.00	25.00	012869390 6222	Maintenance / Inspection Svcs Bldg Improve
G20M4250	DAPPER TIRE COMPANY	5,100.00	5,100.00	012869390 4347	Maintenance / Repair & Upkeep Equip Supplies
G20M4260	ROBERT SKEELS & COMPANY	700.00	700.00	012869390 4347	Maintenance / Repair & Upkeep Equip Supplies
G20M4282	GANAHL LUMBER COMPANY	1,892.00	1,892.00	012879390 4345	Vandalism / Maintenance Supplies
G20M4285	KEN'S LOCKSMITHERY	1,000.00	1,000.00	012879390 4347	Vandalism / Repair & Upkeep Equip Supplies
G20M4286	ORCHARD SUPPLY	25.90	25.90	133207380 4347	Cafeteria Fund / Repair & Upkeep Equip Supplies
G20M4287	ALLIED REFRIGERATION INC.	100.00	100.00	012869390 4345	Maintenance / Maintenance Supplies
G20M4288	CLARK SECURITY PRODUCTS INC.	300.00	300.00	012869390 4345	Maintenance / Maintenance Supplies
G20M4289	HILLYARD / LOS ANGELES	2,768.05	2,768.05	010014089 4310	Donations - Plavan / Instructional Supplies
G20M4290	UNITED RENTALS	1,000.00	1,000.00	012879390 4347	Vandalism / Repair & Upkeep Equip Supplies
G20M4291	MCMASTER CARR SUPPLY CO	200.00	200.00	014869390 5899	STAR Building DO-Routine Maint / Other Operating
G20M4292	TIME AND ALARM SYSTEMS INC.	500.00	500.00	014869390 5899	STAR Building DO-Routine Maint / Other Operating
G20M4293	UNITED RENTALS	325.00	325.00	012899390 4343	Gardening / Gardening Supplies
G20M4294	PARKHOUSE TIRE INC.	900.00	900.00	012869390 5540	Maintenance / Waste Disposal
G20M4301	TIME AND ALARM SYSTEMS INC.	347.00	347.00	012869390 5645	Maintenance / Outside Svcs-Repairs & Mainten
G20M4302	PRECISION FLOOR COVERING INC.	852.00	852.00	120016098 4347	Extended School Instructional / Repair & Upkeep Equip
G20M4303	ORANGE COUNTY REGISTER	39.74	39.74	012869390 4325	Maintenance / Office Supplies
G20M4305	SOUTHERN COUNTIES OIL	900.00	900.00	012869390 5560	Maintenance / Fuel
G20R1190	OKERSON, LYNDA	300.00	300.00	012623175 5813	EISS Grant - Gisler / Consultant
G20R1239	TARGET STORES	50.00	50.00	012731616 4327	Health Supplies - Newland / Health Supplies
G20R1240	TARGET STORES	432.00	432.00	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1244	SCHOLASTIC BOOK FAIRS	50.00	50.00	010144989 4310	Donations - Masuda / Instructional Supplies
G20R1246	SAMS CLUB	200.00	200.00	012719470 4325	Personnel Department / Office Supplies
G20R1247	PARKER & COVERT LLP	500.00	383.00	012159470 5830	Personnel - Legal Services / Legal Fees

**FOUNTAIN VALLEY SD**  
**PURCHASE ORDER DETAIL REPORT**  
**BOARD OF TRUSTEES MEETING 06/13/2013**

FROM 05/08/2013 TO 05/31/2013

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>ACCOUNT AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20R1247	*** CONTINUED ***				
			117.00	012719470 5830	Personnel Department / Legal Fees
G20R1248	RADIO WORKS	1,080.00	1,080.00	120336098 4325	Extended School Administration / Office Supplies
G20R1249	ORANGE COUNTY DEPARTMENT OF ED	1,500.00	1,500.00	010269275 5210	School Readiness Kinder Admin / Travel, Conference,
G20R1250	TARGET STORES	216.00	216.00	015641660 4310	Special Ed. - Newland S&L / Instructional Supplies
G20R1251	TARGET STORES	275.40	275.40	012589860 4310	Discrete Trial Training / Instructional Supplies
G20R1252	STAPLES	27.00	27.00	012589860 4310	Discrete Trial Training / Instructional Supplies
G20R1253	SOUTHWEST SCHOOL AND OFFICE SU	67.35	67.35	012289961 4310	MAA - Administration / Instructional Supplies
G20R1254	SCHOOL SPECIALTY	200.00	200.00	012539962 4310	Tobacco-Use-OCDE Instructional / Instructional Supplies
G20R1255	JFK TRANSPORTATION CO INC.	1,200.00	1,200.00	010011689 5811	Donations - Newland / Transportation Outside Agency
G20R1256	TARGET STORES	125.00	125.00	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R1257	LAKESHORE LEARNING MATERIALS	25.00	25.00	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R1258	STAPLES	150.00	150.00	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R1259	ARIEL SUPPLY INC.	155.41	155.41	012289961 4325	MAA - Administration / Office Supplies
G20R1260	LAKESHORE LEARNING MATERIALS	113.00	113.00	015104760 4310	Special Ed. - Courreges SDC / Instructional Supplies
G20R1261	STAPLES	200.00	200.00	015644060 4310	Special Ed. - Plavan S&L / Instructional Supplies
G20R1262	CHEFS' TOYS	2,714.80	2,714.80	133207380 4410	Cafeteria Fund / Fixed Assets \$500-\$5000
G20R1264	TARGET STORES	108.00	108.00	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1265	TOYS R US	108.00	108.00	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1266	LAKESHORE LEARNING MATERIALS	108.00	108.00	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1267	TARGET STORES	19.00	19.00	012734949 4327	Health Supplies - Masuda / Health Supplies
G20R1268	METRO BUSINESS SOLUTIONS INC.	250.54	250.54	012723232 4325	Sch Site Admin - Cox / Office Supplies
G20R1269	LAKESHORE LEARNING MATERIALS	31.00	31.00	010013232 4310	Sch Site Instr - Cox / Instructional Supplies
G20R1270	TOYS R US	324.00	324.00	120016098 4310	Extended School Instructional / Instructional Supplies

**FOUNTAIN VALLEY SD**  
**PURCHASE ORDER DETAIL REPORT**  
**BOARD OF TRUSTEES MEETING 06/13/2013**

FROM 05/08/2013 TO 05/31/2013

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>ACCOUNT AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20R1271	SCHOOL SPECIALTY	378.00	378.00	015514760 4310	Special Ed. - Courreges RSP / Instructional Supplies
G20R1272	TARGET STORES	75.00	75.00	010011010 4310	Sch Site Instr - Tamura / Instructional Supplies
G20R1273	TARGET STORES	24.91	24.91	010011010 4310	Sch Site Instr - Tamura / Instructional Supplies
G20R1274	STAPLES	86.39	86.39	010011089 4310	Donations - Tamura / Instructional Supplies
G20R1275	CERTIFIED TRANSPORTATION BUS C	1,094.08	930.00	010011089 5811	Donations - Tamura / Transportation Outside Agency
			164.08	012929395 5811	Home-to-School Transportation / Transportation Outside
G20R1276	CREATEASKATE.ORG	575.00	575.00	010143838 4311	Sch Site Instr - Talbert / Elective Supplies
G20R1277	ORANGE COUNTY DEPARTMENT OF ED	150.00	150.00	012719275 5210	Curriculum/Instruction Office / Travel, Conference,
G20R1278	ADAMS, SUSAN	1,063.97	1,063.97	012623175 5813	EISS Grant - Gisler / Consultant
G20R1279	GLASSICAL DESIGNS INC.	341.58	341.58	012819771 5828	Personnel Commission / Staff Recognition
G20R1280	SOUTHERN CALIFORNIA PIZZA COMP	108.00	108.00	120016498 4310	Child Dev Oka Preschool Instr / Instructional Supplies
G20R1281	SOUTHERN CALIFORNIA PIZZA COMP	108.00	108.00	120016798 4310	Child Dev Cox Preschool-Instr / Instructional Supplies
G20R1282	STAPLES	150.00	150.00	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R1283	STAPLES	244.65	244.65	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R1284	LAKESHORE LEARNING MATERIALS	63.00	63.00	015643160 4310	Special Ed. - Gisler S&L / Instructional Supplies
G20R1286	LAKESHORE LEARNING MATERIALS	100.00	100.00	015513160 4310	Special Ed. - Gisler RSP / Instructional Supplies
G20R1287	STAPLES	193.00	193.00	015513160 4310	Special Ed. - Gisler RSP / Instructional Supplies
G20R1288	BARNES AND NOBLE	794.69	794.69	010013131 4310	Sch Site Instr - Gisler / Instructional Supplies
G20R1289	ARIEL SUPPLY INC.	630.50	630.50	010013131 4310	Sch Site Instr - Gisler / Instructional Supplies
G20R1290	ORANGE COUNTY DEPARTMENT OF ED	10.00	10.00	012308055 5210	Title I - Administration / Travel, Conference, Workshop
G20R1291	STAPLES	132.00	132.00	015514960 4310	Special Ed. - Masuda RSP / Instructional Supplies
G20R1292	PIZZA D'ORO	469.79	469.79	012539962 4310	Tobacco-Use-OCDE Instructional / Instructional Supplies
G20R1293	STAPLES	94.00	94.00	015514960 4310	Special Ed. - Masuda RSP / Instructional Supplies
G20R1294	SARSON USA INC	263.79	263.79	012539962 4310	Tobacco-Use-OCDE Instructional / Instructional Supplies

**FOUNTAIN VALLEY SD**  
**PURCHASE ORDER DETAIL REPORT**  
**BOARD OF TRUSTEES MEETING 06/13/2013**

FROM 05/08/2013 TO 05/31/2013

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>ACCOUNT AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20R1295	TARGET STORES	63.72	63.72	015103760 4310	Special Ed. - Oka SDC / Instructional Supplies
G20R1296	ORANGE COUNTY DEPARTMENT OF ED	130.00	130.00	012719275 5210	Curriculum/Instruction Office / Travel, Conference,
G20R1297	STAPLES	145.00	145.00	010014040 4310	Sch Site Instr - Plavan / Instructional Supplies
G20R1299	TARGET STORES	150.00	150.00	015513860 4310	Special Ed. - Talbert RSP / Instructional Supplies
G20R1300	STAPLES	244.00	244.00	015513860 4310	Special Ed. - Talbert RSP / Instructional Supplies
G20R1301	BARNES AND NOBLE	51.46	51.46	010143838 4311	Sch Site Instr - Talbert / Elective Supplies
G20R1302	STAPLES	418.00	418.00	015513860 4310	Special Ed. - Talbert RSP / Instructional Supplies
G20R1303	HOME DEPOT	100.00	100.00	010143838 4311	Sch Site Instr - Talbert / Elective Supplies
G20R1304	BENTLEY PRINTING & GRAPHICS IN	274.32	274.32	010143838 4325	Sch Site Instr - Talbert / Office Supplies
G20R1305	SUNBURST DIGITAL INC.	1,277.00	1,277.00	010014787 4310	Other Donations - Courreges / Instructional Supplies
G20R1306	STAPLES	194.87	33.03 161.84	010018255 4310 012395098 4325	Title I - Instructional / Instructional Supplies 7395 Sch/Libr Imp Instr-DO / Office Supplies
G20R1307	SAMS CLUB	536.52	536.52	015513860 4410	Special Ed. - Talbert RSP / Fixed Assets \$500-\$5000
G20R1308	TARGET STORES	100.00	100.00	010143838 4310	Sch Site Instr - Talbert / Instructional Supplies
G20R1309	TOYS R US	216.00	216.00	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1310	BLICK ART MATERIALS	106.14	106.14	010142929 4311	Sch Site Instr - Fulton / Elective Supplies
G20R1311	SOUTHWEST SCHOOL AND OFFICE SU	74.00	74.00	015514060 4310	Special Ed. - Plavan RSP / Instructional Supplies
G20R1312	STAPLES	50.98	50.98	015644060 4310	Special Ed. - Plavan S&L / Instructional Supplies
G20R1314	SCHOOL SPECIALTY	540.00	540.00	120336098 4325	Extended School Administration / Office Supplies
G20R1315	STAPLES	378.00	378.00	010011616 4310	Sch Site Instr - Newland / Instructional Supplies
G20R1316	BARNES AND NOBLE	189.00	189.00	010011616 4310	Sch Site Instr - Newland / Instructional Supplies
G20R1318	PARTY BOUNCE	1,036.80	1,036.80	120016098 4310	Extended School Instructional / Instructional Supplies
G20R1319	A1GM	319.68	319.68	010013789 4310	Donations - Oka / Instructional Supplies
G20R1321	UC REGENTS	150.00	150.00	010019961 5210	Medi-Cal Billing-Instructional / Travel, Conference,

**FOUNTAIN VALLEY SD**  
**PURCHASE ORDER DETAIL REPORT**  
**BOARD OF TRUSTEES MEETING 06/13/2013**

**FROM 05/08/2013 TO 05/31/2013**

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>ACCOUNT AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20R1322	STAPLES	100.00	100.00	010143838 4310	Sch Site Instr - Talbert / Instructional Supplies
G20R1323	TARGET STORES	100.00	100.00	010143838 4310	Sch Site Instr - Talbert / Instructional Supplies
G20R1325	SOUTHWEST SCHOOL AND OFFICE SU	1,080.00	1,080.00	120017098 4310	CDC-Summer Camp Instructional / Instructional Supplies
G20R1326	SOUTHWEST SCHOOL AND OFFICE SU	400.00	400.00	012621075 4310	EISS Grant - Tamura / Instructional Supplies
G20R1327	METRO BUSINESS SOLUTIONS INC.	64.79	64.79	012723232 4325	Sch Site Admin - Cox / Office Supplies
G20R1329	STAPLES	462.00	462.00	015512960 4310	Special Ed. - Fulton RSP / Instructional Supplies
G20R1330	STAPLES	330.00	330.00	015102960 4310	Special Ed. - Fulton SDC / Instructional Supplies
G20S8054	WAXIE	243.00	243.00	011000000 9320	Revenue Limit - State Revenues / STORES
G20S8055	WAXIE	66.87	66.87	011000000 9320	Revenue Limit - State Revenues / STORES
G20S8056	UNITED HEALTH SUPPLIES	421.20	421.20	011000000 9320	Revenue Limit - State Revenues / STORES
G20S8057	CANNON SPORTS	476.32	476.32	011000000 9320	Revenue Limit - State Revenues / STORES
G20S8058	UNITED HEALTH SUPPLIES	35.70	35.70	011000000 9320	Revenue Limit - State Revenues / STORES
G20S8059	WAXIE	4,436.24	4,436.24	011000000 9320	Revenue Limit - State Revenues / STORES
	<b>Fund 01 Total:</b>	<b>40,774.65</b>			
	<b>Fund 12 Total:</b>	<b>6,100.80</b>			
	<b>Fund 13 Total:</b>	<b>2,740.70</b>			
	<b>Total Amount of Purchase Orders:</b>	<b>49,616.15</b>			

**FOUNTAIN VALLEY SD**

**PURCHASE ORDER DETAIL REPORT - CHANGE ORDERS**

BOARD OF TRUSTEES

06/13/2013

FROM 05/08/2013 TO 05/31/2013

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>CHANGE AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20M4024	RESOURCE BUILDING MATERIALS	6,200.00	+200.00	012899390 4343	Gardening / Gardening Supplies
G20M4059	REFRIGERATION CONTROL COMPANY	7,000.00	+2,000.00	012869390 5899	Maintenance / Other Operating Expenses
G20M4252	CLARK SECURITY PRODUCTS INC.	270.99	+235.99	012879390 4347	Vandalism / Repair & Upkeep Equip Supplies
G20R0161	SAMS CLUB	1,616.25	+538.75	120016198 4310	State Preschool Instructional / Instructional Supplies
G20R0279	ATKINSON ANDELSON LOYA RUDD &	20,000.00	+10,000.00	402969380 5830	Property - Legal Services / Legal Fees
G20R0294	SOUTHWEST SCHOOL AND OFFICE SU	5,342.00	+1,342.00	010014040 4310	Sch Site Instr - Plavan / Instructional Supplies
G20R0320	SCHOOL SPECIALTY	1,750.00	+750.00	010144949 4310	Sch Site Instr - Masuda / Instructional Supplies
G20R0636	SOUTHWEST SCHOOL AND OFFICE SU	496.00	+196.00	015104060 4310	Special Ed. - Plavan SDC / Instructional Supplies
G20R0827	SOUTHWEST SCHOOL AND OFFICE SU	485.00	+85.00	015514760 4310	Special Ed. - Courreges RSP / Instructional Supplies
G20R1014	APPLE COMPUTER ORDER	1,800.48	-1,880.60	010019961 4310	Medi-Cal Billing-Instructional / Instructional Supplies
			+716.64	010019961 4399	Medi-Cal Billing-Instructional / Equipment Under \$500
			+1,083.84	010019961 4410	Medi-Cal Billing-Instructional / Fixed Assets \$500-\$5000
G20R1036	APPLE COMPUTER ORDER	489.84	-0.48	010144989 4399	Donations - Masuda / Equipment Under \$500
G20R1078	MICRO CENTER	2,419.04	-2,426.76	010144949 4311	Sch Site Instr - Masuda / Elective Supplies
			+637.07	010144949 4399	Sch Site Instr - Masuda / Equipment Under \$500
			+1,781.97	010144949 4410	Sch Site Instr - Masuda / Fixed Assets \$500-\$5000
G20R1083	APPLE COMPUTER ORDER	4,658.16	-122.93	010304755 4399	EIA-Courreges / Equipment Under \$500
G20R1084	APPLE COMPUTER ORDER	1,074.96	-30.68	010303755 4399	EIA-Oka / Equipment Under \$500
G20R1085	APPLE COMPUTER ORDER	1,074.96	-30.68	010303255 4399	EIA-Cox / Equipment Under \$500
G20R1086	APPLE COMPUTER ORDER	1,791.60	-49.13	010303155 4399	EIA-Gisler / Equipment Under \$500
G20R1143	CDWG	533.53	-538.92	010013789 4399	Donations - Oka / Equipment Under \$500
			+533.53	010013789 4410	Donations - Oka / Fixed Assets \$500-\$5000
G20R1233	CONSILIANTECHNOLOGIES LLC	18,686.52	+134.28	016689380 4410	7394 TIIG Admin Tech-Operation / Fixed Assets
G20R1237	SUNBURST DIGITAL INC.	999.95	-1.08	010014787 4310	Other Donations - Courreges / Instructional Supplies

**FOUNTAIN VALLEY SD**

**PURCHASE ORDER DETAIL REPORT - CHANGE ORDERS**

**BOARD OF TRUSTEES**

**06/13/2013**

**FROM 05/08/2013 TO 05/31/2013**

<u>PO NUMBER</u>	<u>VENDOR</u>	<u>PO TOTAL</u>	<u>CHANGE AMOUNT</u>	<u>ACCOUNT NUMBER</u>	<u>PSEUDO / OBJECT DESCRIPTION</u>
G20S8052	UNITED HEALTH SUPPLIES	176.58	-10.00	011000000 9320	Revenue Limit - State Revenues / STORES
	<b>Fund 01 Total:</b>		<b>4,605.06</b>		
	<b>Fund 12 Total:</b>		<b>538.75</b>		
	<b>Fund 40 Total:</b>		<b>10,000.00</b>		
	<b>Total Amount of Change Orders:</b>		<b>15,143.81</b>		

# FOUNTAIN VALLEY SD

Reference #:

## Transfer of Funds

2013 53

It has been resolved to make the budget transfers as listed below per Education Code 42600.

### Fund: 0101 GENERAL FUND

<b>Object</b>	<b>Description</b>	<b>FROM</b>	<b>TO</b>
1100	TEACHERS' SALARIES	6,819.00	5,872.00
2100	INSTRUCTIONAL AIDES' SALARIES	82.00	495.00
2200	CLASSIFIED SUPPORT		5,745.00
2400	CLERICAL & OFFICE SALARIES	50.00	686.00
2900	OTHER CLASSIFIED SALARIES		245.00
3101	STRS-CERTIFICATED POSITIONS	367.00	710.00
3201	PERS-CERTIFICATED		17.00
3202	PERS-CLASSIFIED	6.00	432.00
3313	MEDICARE-CERTIFICATED	62.00	129.00
3314	MEDICARE-CLASSIFIED	1.00	101.00
3354	ALTERNATIVE RETIRE-CLASSIFIED		46.00
3355	OASDI-CERTIFICATED		9.00
3356	OASDI-CLASSIFIED	5.00	264.00
3501	SUI-CERTIFICATED	46.00	125.00
3502	SUI-CLASSIFIED	1.00	76.00
3601	WORKERS'COMP-CERTIFICATED	88.00	179.00
3602	WORKERS'COMP-CLASSIFIED	1.00	146.00
3802	PERS REDUCTION-CLASSIFIED	96.00	165.00
4300	MATERIALS & SUPPLIES	2,317.00	32,724.00
4400	NONCAPITALIZATION EQUIPMENT	2,867.00	39,999.00
5200	TRAVEL & CONFERENCES		1,366.00
5800	PROF/CONS SERV & OPER EXPENSE	76,151.00	5,105.00
9740	RESTRICTED BALANCE	3,705.00	
9789	RESERVE FOR ECONOMIC UNCERTAIN		16,927.00
9790	UNASSIGNED/UNAPPROPRIATED	19,342.00	443.00
<b>Subfund Total:</b>		<b>112,006.00</b>	<b>112,006.00</b>

I certify this is a true excerpt from the Minutes of a regular Board Meeting held by the FOUNTAIN VALLEY SD Board of Trustees, June 13, 2013.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Board of Trustees

The above transfer was approved on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

APPROVED: Superintendent of Schools, County of Orange: \_\_\_\_\_  
Deputy

# FOUNTAIN VALLEY SD

## Transfer of Funds

Reference #:  
2013 54

It has been resolved to make the budget transfers as listed below per Education Code 42600.

**Fund: 1212 CHILD DEVELOPMENT**

Object	Description	FROM	TO
2100	INSTRUCTIONAL AIDES' SALARIES	1,500.00	5,000.00
3202	PERS-CLASSIFIED		285.00
3314	MEDICARE-CLASSIFIED		36.00
3356	OASDI-CLASSIFIED		155.00
3502	SUI-CLASSIFIED		27.00
3602	WORKERS'COMP-CLASSIFIED		52.00
3802	PERS REDUCTION-CLASSIFIED		40.00
9740	RESTRICTED BALANCE	4,095.00	
<b>Subfund Total:</b>		<b>5,595.00</b>	<b>5,595.00</b>

I certify this is a true excerpt from the Minutes of a regular Board Meeting held by the FOUNTAIN VALLEY SD Board of Trustees, June 13, 2013.

AYES: \_\_\_\_\_  
 NOES: \_\_\_\_\_  
 ABSENT: \_\_\_\_\_

\_\_\_\_\_  
 Secretary, Board of Trustees

The above transfer was approved on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

APPROVED: Superintendent of Schools, County of Orange: \_\_\_\_\_  
Deputy

# FOUNTAIN VALLEY SD

Reference #:

## Transfer of Funds

2013 55

It has been resolved to make the budget transfers as listed below per Education Code 42600.

<b>Fund: 1313 CAFETERIA FUND</b>
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Object	Description	FROM	TO
<b>Subfund Total:</b>		<b>0.00</b>	<b>0.00</b>

I certify this is a true excerpt from the Minutes of a regular Board Meeting held by the FOUNTAIN VALLEY SD Board of Trustees, June 13, 2013.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Board of Trustees

The above transfer was approved on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

APPROVED: Superintendent of Schools, County of Orange: \_\_\_\_\_  
Deputy

# FOUNTAIN VALLEY SD

Reference #:

## Adjustment of Funds

2013 56

It has been resolved to make the budget adjustments as listed below per Education Code 42600.

<b>Fund: 0101 GENERAL FUND</b>
--------------------------------

<b>Object</b>	<b>Description</b>	<b>FROM</b>	<b>TO</b>
1100	TEACHERS' SALARIES	4,918,707.00	4,924,237.00
2100	INSTRUCTIONAL AIDES' SALARIES		12,075.00
2200	CLASSIFIED SUPPORT		2,820.00
2400	CLERICAL & OFFICE SALARIES		4,500.00
3101	STRS-CERTIFICATED POSITIONS	405,792.00	406,170.00
3202	PERS-CLASSIFIED		322.00
3313	MEDICARE-CERTIFICATED	69,737.00	69,810.00
3314	MEDICARE-CLASSIFIED		285.00
3353	ARP-CERTIFICATED		2.00
3354	ALTERNATIVE RETIRE-CLASSIFIED		286.00
3356	OASDI-CLASSIFIED		440.00
3501	SUI-CERTIFICATED	54,106.00	54,170.00
3502	SUI-CLASSIFIED		215.00
3601	WORKERS'COMP-CERTIFICATED	101,374.00	101,476.00
3602	WORKERS'COMP-CLASSIFIED		433.00
3802	PERS REDUCTION-CLASSIFIED		1,541.00
4200	BOOKS OTHER THAN TEXTBOOKS	7.00	179.00
4300	MATERIALS & SUPPLIES	2,560.00	18,292.00
4400	NONCAPITALIZATION EQUIPMENT		6,221.00
5200	TRAVEL & CONFERENCES		3,430.00
5300	DUES AND MEMBERSHIPS	300.00	
5600	RENTAL,LEASE,REPAIR & NON CAP		2,721.00
5800	PROF/CONS SERV & OPER EXPENSE	5,079.00	22,781.00
6100	SITES AND IMPROVEMENT OF SITES		6,033.00
8000	REVENUE LIMIT SOURCES	10,241,955.00	10,007,566.00
8100	FEDERAL INCOME	125,821.00	108,054.00
8200	FEDERAL INCOME		128,093.00
8300	STATE INCOME	20.00	
8500	STATE INCOME		276.00
8600	LOCAL INCOME	13,005.00	50,612.00
9740	RESTRICTED BALANCE	12.00	120,000.00
9790	UNASSIGNED/UNAPPROPRIATED	10,268,128.00	9,981,163.00

# FOUNTAIN VALLEY SD

Reference #:

## Adjustment of Funds

2013 56

It has been resolved to make the budget adjustments as listed below per Education Code 42600.

**Fund: 0101 GENERAL FUND**

<b>Object</b>	<b>Description</b>	<b>FROM</b>	<b>TO</b>
	<b>Subfund Total:</b>	<b>26,206,603.00</b>	<b>26,034,203.00</b>

I certify this is a true excerpt from the Minutes of a regular Board Meeting held by the FOUNTAIN VALLEY SD Board of Trustees, June 13, 2013.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Board of Trustees

The above adjustment was approved on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

APPROVED: Superintendent of Schools, County of Orange: \_\_\_\_\_  
Deputy

# FOUNTAIN VALLEY SD

Reference #:

## Adjustment of Funds

2013 57

It has been resolved to make the budget adjustments as listed below per Education Code 42600.

<b>Fund: 2525 CAPITAL FACILITIES</b>
--------------------------------------

<b>Object</b>	<b>Description</b>	<b>FROM</b>	<b>TO</b>
5800	PROF/CONS SERV & OPER EXPENSE		823.00
8600	LOCAL INCOME		52,520.00
9780	OTHER ASSIGNMENTS		51,697.00
<b>Subfund Total:</b>		<b>0.00</b>	<b>105,040.00</b>

I certify this is a true excerpt from the Minutes of a regular Board Meeting held by the FOUNTAIN VALLEY SD Board of Trustees, June 13, 2013.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Board of Trustees

The above adjustment was approved on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

APPROVED: Superintendent of Schools, County of Orange: \_\_\_\_\_  
Deputy

**FOUNTAIN VALLEY SCHOOL DISTRICT  
PERSONNEL**

**M E M O R A N D U M**

TO: Marc Ecker, Superintendent

FROM: Cathie Abdel, Assistant Superintendent, Personnel

SUBJECT: NOTICE OF LAYOFF FOR CLASSIFIED POSITION

DATE: May 24, 2013

-----

**BACKGROUND**

The number of Spanish speaking English learners continues to drop District-wide. At this time, there are no Spanish speakers who will be enrolled in the Newcomer Program at Masuda Middle School. Therefore, the Spanish speaking Bilingual Instructional Assistant position will be eliminated.

At Oka, the number of English learners also continues to drop and Vietnamese English learners now exceed the number Spanish English learners. This will result in a staffing adjustment at Oka for the 2013/2014 school year. Based on the needs of the students, the decision has been made to provide Vietnamese rather than Spanish support. In the next school year, the number of Bilingual Instructional Assistants at Oka will remain the same and at Masuda there will be three rather than four. Primary language support will continue at Masuda in Arabic, Mandarin Chinese, and Vietnamese.

Notice to the person serving in the positions affected by this layoff shall be in accordance with Education Code 45117, Article XI, Section 2.A. of the collective bargaining agreement, and Personnel Commission Rule 603.

**IMPACT**

The following classified positions in the Instructional Assistant, Bilingual (Spanish) classification shall be eliminated following the required 60 day notice (as of August 13, 2013):

<u>Site</u>	<u>Hrs/wk</u>
Oka	15
Masuda	15

**RECOMMENDATION**

It is recommended that the Board of Trustees eliminate the services of the positions so designated on the effective date as listed above.

Approved:

\_\_\_\_\_  
Marc Ecker, Superintendent

\_\_\_\_\_  
Date



FOUNTAIN VALLEY SCHOOL DISTRICT  
BUSINESS SERVICES  
D/FS 13/14-27

MEMORANDUM

TO: Stephen McMahon – Assistant Superintendent, Business Administration  
FROM: Scott Martin - Director, Fiscal Services  
SUBJECT: **CONSOLIDATED APPLICATION FOR FUNDING CATEGORICAL AID PROGRAMS (PART I)**  
DATE: June 3, 2013

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**BACKGROUND:**

The District is required to apply for categorical aid funds each year prior to the California State Budget's approval by the legislature. Final funding amounts will be received after the State budget is approved this summer, and Part II of the Application containing entitlements, allocations, and number of participants in specified programs will be submitted in the fall.

The 2013-2014 Application for Funding Consolidated Categorical Programs is included as an attachment and contains a description of the programs, activities, and services, as well as legal assurances of compliance for the following Consolidated Categorical Aid Programs.

Title I, Part A (Basic Grant)  
Title II, Part A (Teacher Quality)  
Title III, Part A (LEP Students)  
Title III, Part A (Immigrant)  
Economic Impact Aid (EIA)

The completion of the 2013-2014 Consolidated Application ensures that funding for these programs will be appropriated to the District upon approval of the State budget and also ensures legal compliance of all State and Federal statutes required for these categorical programs.

The district will automatically receive funding for the categorical programs listed below due to the Categorical Program Provisions in SBx3 4 2008 Budget Act flexibility thru 2012-2013 school year. SB 70 has extended the Tier 3 flexibility for two additional years to June 30, 2015. These funds are unrestricted and legal assurances for these programs have been removed from the Consolidated Application.

School Safety and Violence Prevention  
Peer Assistance and Review (PAR)  
Middle and High School Supplemental Counseling Program

**RECOMMENDATION:**

It is recommended that the Board of Trustees approves transmittal of the Consolidated Application Part I to the California State Department of Education.

**2013-14 Certification of Assurances**

Submission of Certification of Assurances is required every fiscal year. A complete list of legal and program assurances for the fiscal year can be found at <http://www.cde.ca.gov/fg/aa/co/ca13asstoc.asp>.

**CDE Program Contact:**

Anne Daniels, Education Data Office, [adaniels@cde.ca.gov](mailto:adaniels@cde.ca.gov), 916-319-0640

**LEA Plan**

An LEA that receives Title III funds or any LEA that receives Title I funds and is in Program Improvement corrective action must certify that its LEA Plan, including any Addenda to the Plan, is current and provide the local online web address for their LEA Plan.

State Board of Education approval date	7/11/2003
LEA Plan Web Site	<a href="http://www.fvsd.k12.ca.us">www.fvsd.k12.ca.us</a>

**Consolidated Application Certification Statement**

I hereby certify that all of the applicable state and federal rules and regulations will be observed by this applicant; that to the best of my knowledge the information contained in this application is correct and complete; and I agree to have the use of these funds reviewed and/or audited according to the standards and criteria set forth in the California Department of Education's Categorical Program Monitoring (CPM) Manual. Legal assurances for all programs are accepted as the basic legal condition for the operation of selected projects and programs and copies of assurances are retained on site. I certify that we accept all assurances except for those for which a waiver has been obtained or requested. A copy of all waivers or requests is on file. I certify that actual ink signatures for this page are on file.

Authorized Representative's Full Name	Marc Ecker
Authorized Representative's Title	Superintendent
Authorized Representative Signature Date	06/13/2013

### 2013-14 Protected Prayer Certification

ESEA Section 9524(b) specifies federal requirements regarding constitutionally protected prayer in public elementary and secondary schools. This form meets the annual requirement and provides written certification.

**CDE Program Contact:**

Franco Rozic, Title I Monitoring & Support, [frozic@cde.ca.gov](mailto:frozic@cde.ca.gov), 916-319-0269  
 Mary Payne, District Improvement Office, [MPayne@cde.ca.gov](mailto:MPayne@cde.ca.gov), 916-319-0379

### Protected Prayer Certification Statement

The LEA hereby assures and certifies to the California State Board of Education that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in the "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools."

The LEA hereby assures that this page has been printed and contains an ink signature. The ink signature copy shall be made available to the California Department of Education upon request or as part of an audit, a compliance review, or a complaint investigation.

The authorized representative agrees to the above statement	Yes
Authorized Representative's Full Name	Marc Ecker
Authorized Representative Title	Superintendent
Authorized Representative Signature Date	06/13/2013
Comment	
If the LEA is not able to certify at this time an explanation must be provided in the Comment field.	

### 2013-14 Application for Funding

**CDE Program Contact:**

Anne Daniels, Education Data Office, [adaniels@cde.ca.gov](mailto:adaniels@cde.ca.gov), 916-319-0640

**Local Governing Board Approval**

The LEA is required to review and receive approval of their Application for Funding selections with their local governing board.

Date of approval by local governing board	06/13/2013
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**District English Learner Advisory Committee (DELAC) Review**

Per Title 5 of the California Code of Regulations Section 11308, if your district has more than 50 English learners the district must establish a District English Learner Advisory Committee (DELAC) and involve them in the application for funding for programs that serve English learners.

DELAC representative's full name	Jennifer Andrews
DELAC review date	06/06/2013
Meeting minutes web address Please enter the web address of DELAC review meeting minutes. If a web address is not available, the LEA must keep the minutes on file which indicates that the application is approved by the committee.	<a href="http://www.fvsvd.k12.ca.us">www.fvsvd.k12.ca.us</a>
DELAC comment If an advisory committee refused to review the application, or if DELAC review is not applicable, enter a comment.	

**Application for Categorical Programs**

To receive specific categorical funds for a school year the LEA must apply for the fund by selecting Yes. Only the categorical funds the LEA is eligible to receive are displayed.

<b>Economic Impact Aid</b> EC 54000 SACS 7090, 7091 By applying for Economic Impact Aid funds the LEA is agreeing to comply with the assurances posted at <a href="http://www.cde.ca.gov/fg/aa/co/ca12asstoc.asp">http://www.cde.ca.gov/fg/aa/co/ca12asstoc.asp</a> .	Yes
<b>Title I Part A (Basic Grant)</b> ESEA Sec. 1111 et seq. SACS 3010	Yes
<b>Title I Part D (Delinquent)</b> ESEA Sec. 1401 SACS 3025	No
<b>Title II Part A (Teacher Quality)</b>	Yes

**2013-14 Application for Funding**

**CDE Program Contact:**

Anne Daniels, Education Data Office, [adaniels@cde.ca.gov](mailto:adaniels@cde.ca.gov), 916-319-0640

ESEA Sec. 2101 SACS 4035	
<b>Title III Part A Immigrant</b>	Yes
ESEA Sec. 3102 SACS 4201	
<b>Title III Part A LEP</b>	Yes
ESEA Sec. 3102 SACS 4203	

**2013-14 Title III, Part A Immigrant Proposed Obligations**

This data collection captures proposed expenditures for the coming year, based on the projected entitlement amount.

**CDE Program Contact:**

Pamela Lucas, Language Policy & Leadership Office, [plucas@cde.ca.gov](mailto:plucas@cde.ca.gov), 916-323-5739  
 Sandra Covarrubias, Language Policy & Leadership Office, [SCovarrubias@cde.ca.gov](mailto:SCovarrubias@cde.ca.gov), 916-319-0267

**Approved Immigrant Sub-grantee Activities**

(e) ACTIVITIES BY AGENCIES EXPERIENCING SUBSTANTIAL INCREASES IN IMMIGRANT CHILDREN AND YOUTH-

(1) IN GENERAL-An eligible entity receiving funds under section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional (opportunities for immigrant children and youth, which may include -

- (A) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;
- (B) support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
- (C) provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
- (D) identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds;

(E) basic instruction services that are directly attributable to the presence in the school district involved of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services;

(F) other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education; and

(G) activities, coordinated with community-based organizations, institutions of higher education, private sector entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.

<b>Projected entitlement:</b>	\$8,399
<b>Object Code - Activities</b>	
1000-1999 Proposed certificated personnel salaries	
2000-2999 Proposed classified personnel salaries	\$3,200
3000-3999 Proposed employee benefits	\$786
4000-4999 Proposed books and supplies	\$1,500
5000-5999 Proposed services and other operating expenditures	\$2,562
Proposed administrative and indirect costs	\$351
<b>Total proposed obligations</b>	<b>\$8,399</b>

**2013-14 Title III, Part A LEP Proposed Obligations**

This data collection captures proposed expenditures for the coming year, based on the projected entitlement amount.

**CDE Program Contact:**

Patty Stevens, Title III Language Policy & Leadership Office, [pstevens@cde.ca.gov](mailto:pstevens@cde.ca.gov), 916-323-5838  
 Geoffrey Ndirangu, Language Policy & Leadership Office, [gndirang@cde.ca.gov](mailto:gndirang@cde.ca.gov), 916-323-5831

**Required and Authorized LEP Sub-grantee Activities**

**Required**

Section 3115 (c)(1) To increase the English Proficiency by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs.

Section 3115 (c)(2) To provide high quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel.

**Authorized**

- (1) Upgrading program objectives and effective instruction strategies.
- (2) Improving the instruction program for limited English proficient children by identifying acquiring and upgrading curricula, instruction materials, educational software, and assessment procedures.
- (3) Providing tutorials and academic or vocational education for limited English proficient children and intensified instruction.
- (4) Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.
- (5) Improving the English proficiency and academic achievement of limited English proficient children.
- (6) Providing community participation programs, family literacy services and parent outreach and training activities to limited English proficient children and their families.

<b>Proposed entitlement:</b>	\$59,725
<b>Object Code - Activity</b>	
1000-1999 Proposed certificated personnel salaries	\$1,400
2000-2999 Proposed classified personnel salaries	\$23,823
3000-3999 Proposed employee benefits	\$6,120
4000-4999 Proposed books and supplies	\$10,000
5000-5999 Proposed services and other operating expenditures	\$17,211
Proposed administrative and indirect costs	\$1,171
<b>Total proposed obligations</b>	<b>\$59,725</b>

**2013-14 Substitute System for Time Accounting**

This certification may be used by auditors and by CDE oversight personnel when conducting audits and sub-recipient monitoring of the substitute time-and-effort system. Approval is automatically granted when the LEA submits and certifies this data collection.

**CDE Program Contact:**

Julie Brucklacher, Financial Accountability & Info Srv, [jbruckla@cde.ca.gov](mailto:jbruckla@cde.ca.gov), 916-327-0858

The LEA certifies that only eligible employees will participate in the substitute system and that the system used to document employee work schedules includes sufficient controls to ensure that the schedules are accurate.

2013-14 Request for authorization	No
2012-13 Request for authorization (Retroactive to July 1, 2012)	No
LEA certifies that the following is a full disclosure of any known deficiencies with the substitute system or known challenges with implementing the system  (Maximum 500 characters)	Fountain Valley will continue using the current methods of substantiating salary and wage charges to federal programs rather than using the substitute system for time accounting.

### 2013-14 Other ESEA Nonprofit Private School Participation

The LEA must offer to provide equitable services that address the needs of nonprofit private school students, teachers, and other educational personnel under the programs listed below.

**CDE Program Contact:**

Laura Nelson, Private School List, [lnelson@cde.ca.gov](mailto:lnelson@cde.ca.gov), 916-319-0229

Patty Stevens, Title III Language Policy & Leadership Office, [pstevens@cde.ca.gov](mailto:pstevens@cde.ca.gov), 916-323-5838

The LEA must offer to provide equitable services that address the needs of nonprofit private school students, teachers, and other educational personnel under the programs listed below. The enrollment numbers are reported under penalty of perjury by each private school on its annual Private School Affidavit. The information filed in the Private School Affidavit is not verified, and the CDE takes no position as to its accuracy. It is expected that districts engaged in private school consultation verify nonprofit status and the accuracy of student enrollment data if it is being used for the purpose of providing equitable services.

Note: The programs displayed below may vary based on Application for Funding selections.

<br/>Note: Elementary and high school districts that have applied for Title II funds have the option to add a shared attendance area nonprofit private school if they wish to share responsibility for that school's Title II equitable services.

School Name	School Code	Enrollment	Title II Part A	Title III Part A LEP	School Added
Shoreline Christian School	6988240	191	N	N	N
The Pegasus School	7005853	529	N	N	N

### 2013-14 Economic Impact Aid School Funding Plan

Based on information provided in the School Student Counts Projected data collection, the table below provides eligibility and ranking information.

**CDE Program Contact:**

Gustavo Gonzalez, EIA / LEP, [ggonzalez@cde.ca.gov](mailto:ggonzalez@cde.ca.gov), 916-319-0420  
 Mark Klinesteker , EIA / SCE, [mklinesteker@cde.ca.gov](mailto:mklinesteker@cde.ca.gov), 916-319-0256

### District Advisory Committee (DAC) Review

Per Title 5 of the California Code of Regulations section 4423(c) and Education Code section 54420, once a school district or county office with juvenile court schools is deemed eligible for Economic Impact Aid (EIA) and designates EIA funds for State Compensatory Education (SCE) then the LEA must give the DAC the opportunity to give or offer advice regarding compensatory education programs.

DAC representative's full name Michelle Eichinger  
 DAC review date 06/06/2013  
 Meeting minutes web address www.fvsd.k12.ca.us  
 Please enter the web address of DAC review meeting minutes.  
 DAC comment  
 If the advisory committee did not review, describe consulting procedures:  
 Group schools by grade span Yes  
 Funding method SCE/LEP  
**NOTE:** If the LEA has selected to fund LEP Only, no additional action or data entry is required for the EIA School Allocation Plan. The Plan should be saved in order to certify the data collection.  
 SCE Ranking Method Count

School Name	School Code	Grade Span Group	Projected Enrollment	Projected Low Income Students	Low Income %	Projected LEP Students	LEP %	Projected EDY Students	EDY %	Projected SCE Students	SCE %	Ranking	SCE Eligible	SCE Fund
Cox (James H.) Elementary	6066922	1	724	239	33.01	157	21.69	299	41.30	695	95.99	1	Y	Y
Plavan (Urbain H.) Elementary	6085278	1	463	139	30.02	111	23.97	198	42.76	448	96.76	2	Y	Y
Oka (Isojiro) Elementary	6068605	1	457	117	25.60	48	10.50	134	29.32	299	65.43	3	Y	Y

### 2013-14 Economic Impact Aid School Funding Plan

Based on information provided in the School Student Counts Projected data collection, the table below provides eligibility and ranking information.

School Name	School Code	Grade Span Group	Projected Enrollment	Projected Low Income Students	Low Income %	Projected LEP Students	LEP %	Projected EDY Students	EDY %	Projected SCE Students	SCE %	Ranking	SCE Eligible	SCE Fund
Tamura (Hisamatsu) Elementary	6027924	1	617	109	17.67	117	18.96	178	28.85	404	65.48	4	N	N
Courreges (Roch) Elementary	6094635	1	694	95	13.69	67	9.65	193	27.81	355	51.15	5	N	N
Gisler (Robert) Elementary	6027973	1	534	80	14.98	56	10.49	160	29.96	296	55.43	6	N	N
Newland (William T.) Elementary	6027999	1	434	39	8.99	16	3.69	78	17.97	133	30.65	7	N	N
Masuda (Kazuo) Middle	6094627	2	799	223	27.91	71	8.89	292	36.55	586	73.34	1	Y	Y
Talbert (Samuel E.) Middle	6071096	2	681	136	19.97	12	1.76	226	33.19	374	54.92	2	N	N
Fulton (Harry C.) Middle	6027916	2	832	138	16.59	26	3.13	202	24.28	366	43.99	3	N	N

### 2013-14 Title I, Part A Nonprofit Private School Participation

The LEA shall provide, on an equitable basis, special educational services or other benefits to nonprofit private school eligible children.

**CDE Program Contact:**

Jyoti Singh, Title I Policy & Program Guidance, [jysingh@cde.ca.gov](mailto:jysingh@cde.ca.gov), 916-319-0372

Rina DeRose-Swinscoe, Title I Policy & Program Guidance, [RDeroseswinscoe@cde.ca.gov](mailto:RDeroseswinscoe@cde.ca.gov), 916-323-0472

The LEA must offer to provide equitable services that address the needs of nonprofit private school students and staff under the programs listed below. The enrollment numbers are reported under penalty of perjury by each private school on its annual Private School Affidavit. The information filed in the Private School Affidavit is not verified, and the CDE takes no position as to its accuracy. It is expected that districts engaged in private school consultation verify nonprofit status and the accuracy of student enrollment data if it is being used for the purpose of providing equitable services.

Note:

The LEA of residence is responsible for providing Title I Part A services to all eligible students who reside in the LEA's Title I attendance area but attend a private non-profit school. This includes students who attend nonprofit private schools outside the LEA's boundaries.

School Name	School Code	Enrollment	Participating	Affirmation On File	Low Income Student Count	Direct Services	Contract Services	School Added
Shoreline Christian School	6988240	191	N	Y		N	N	N
The Pegasus School	7005853	529	N	Y		N	N	N

**2013-14 Title I, Part A Planned School Allocations**

Based on information provided in the School Student Counts data collection, the table below provides eligibility and ranking information. For school allocation planning, the LEA has indicated which schools it intends to allocate Title I Part A funds by entering a check in the Fund column.

**CDE Program Contact:**

Nancy Bodenhausen, Title I Policy & Program Guidance, [NBodenhausen@cde.ca.gov](mailto:NBodenhausen@cde.ca.gov), 916-445-4904  
 Lana Zhou, Title I Policy & Program Guidance, [lzhou@cde.ca.gov](mailto:lzhou@cde.ca.gov), 916-319-0956

If an exception to funding is needed, enter an Exception Reason. Use lower case only.

**Allowable Exception Reasons**

- a - Meets 35% Low Income Requirement
- c - Funded by Other Allowable Sources
- d - Desegregation Waiver on File
- e - Grandfather Provision
- f - Feeder Pattern
- g - Local Funded Charter Opted Out
- h - Local Funded Charter Opt In

Group Schools by Grade Span	Yes
District-wide Low Income %	21.09%
Grade Span 1 Low Income %	20.85%
Grade Span 2 Low Income %	21.50%
Grade Span 3 Low Income %	No Data

School Name	School Code	Grade Span Group	Projected Enrollment	Projected Low Income Students	Low Income %	Eligible	Funding Required	Ranking	Fund Flag	Exception Reason	Comment
Cox (James H.) Elementary	6066922	1	724	239	33.01	Y	N	1	Y		
Plavan (Urbain H.) Elementary	6085278	1	463	139	30.02	Y	N	2	N		
Oka (Isojiro) Elementary	6068605	1	457	117	25.60	Y	N	3	N		
Tamura (Hisamatsu) Elementary	6027924	1	617	109	17.67	N	N	4	N		
Gisler (Robert) Elementary	6027973	1	534	80	14.98	N	N	5	N		

**2013-14 Title I, Part A Planned School Allocations**

Based on information provided in the School Student Counts data collection, the table below provides eligibility and ranking information. For school allocation planning, the LEA has indicated which schools it intends to allocate Title I Part A funds by entering a check in the Fund column.

School Name	School Code	Grade Span Group	Projected Enrollment	Projected Low Income Students	Low Income %	Eligible	Funding Required	Ranking	Fund Flag	Exception Reason	Comment
Courreges (Roch) Elementary	6094635	1	694	95	13.69	N	N	6	N		
Newland (William T.) Elementary	6027999	1	434	39	8.99	N	N	7	N		
Masuda (Kazuo) Middle	6094627	2	799	223	27.91	Y	N	1	Y		
Talbert (Samuel E.) Middle	6071096	2	681	136	19.97	N	N	2	N		
Fulton (Harry C.) Middle	6027916	2	832	138	16.59	N	N	3	N		

## 2012-13 Title II, Part A Fiscal Year Expenditure Report, 12 Months

A report of year-to-date expenditures and encumbrances by activity.

**CDE Program Contact:**

Jackie Rose, Title II Leadership, [jrose@cde.ca.gov](mailto:jrose@cde.ca.gov), 916-322-9503

2012-13 Title II, Part A entitlement	\$134,030
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**Professional Development Expenditures**

Professional development for teachers	\$10,800
Professional development for administrators	
Subject matter project	\$1,208
Other professional development expenditures	

**Exams and Test Preparation Expenditures**

Exam fees, reimbursement	
Test preparation training and or materials	
Other exam and test preparation expenditures	

**Recruitment, Training, and Retaining Expenditures**

Recruitment activities	
Hiring incentive and or relocation allotment	
National Board Certification and or stipend	
Verification process for special settings (VPSS)	
University course work	
Other recruitment training and retaining expenditures	

**Miscellaneous Expenditures**

Class size reduction	\$120,897
Administrative and indirect costs	\$760
Other allowable expenditures or encumbrances	
<b>Total expenditures and encumbrances</b>	<b>\$133,665</b>
General Comment (Maximum 500 characters)	

## 2012-13 Title III Part A Immigrant YTD Obligations Report, 12 Months

A report of year-to-date obligations by activity.

### CDE Program Contact:

Pamela Lucas, Language Policy & Leadership Office, [plucas@cde.ca.gov](mailto:plucas@cde.ca.gov), 916-323-5739  
 Sandra Covarrubias, Language Policy & Leadership Office, [SCovarrubias@cde.ca.gov](mailto:SCovarrubias@cde.ca.gov), 916-319-0267

### Approved Immigrant Sub-grantee Activities

(e) ACTIVITIES BY AGENCIES EXPERIENCING SUBSTANTIAL INCREASES IN IMMIGRANT CHILDREN AND YOUTH-

(1) IN GENERAL-An eligible entity receiving funds under section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional (opportunities for immigrant children and youth, which may include -

- (A) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;
- (B) support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
- (C) provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
- (D) identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds;

**(E) basic instruction services that are directly attributable to the presence in the school district involved of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services;**

(F) other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education; and

(G) activities, coordinated with community-based organizations, institutions of higher education, private sector entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.

2011-12 Title III, Part A Immigrant entitlement	\$9,400
<b>Object Code - Activity</b>	
1000-1999 Certificated personnel salaries	\$0
2000-2999 Classified Personnel Salaries	\$1,783
3000-3999 Employee Benefits	\$105
4000-4999 Books And Supplies	\$4,246
5000-5999 Services and other operating expenditures	\$0
Administrative And Indirect Costs	\$521
Total Expended Amount	\$6,655
General comment	

### 2012-13 Title III Part A Immigrant YTD Obligations Report, 12 Months

A report of year-to-date obligations by activity.

**CDE Program Contact:**

Pamela Lucas, Language Policy & Leadership Office, [plucas@cde.ca.gov](mailto:plucas@cde.ca.gov), 916-323-5739

Sandra Covarrubias, Language Policy & Leadership Office, [SCovarrubias@cde.ca.gov](mailto:SCovarrubias@cde.ca.gov), 916-319-0267

(Maximum 500 characters)

## 2012-13 Title III, Part A LEP YTD Obligations Report, 12 Months

A report of year-to-date obligations by activity.

### CDE Program Contact:

Patty Stevens, Title III Language Policy & Leadership Office, [pstevens@cde.ca.gov](mailto:pstevens@cde.ca.gov), 916-323-5838  
 Geoffrey Ndirangu, Language Policy & Leadership Office, [gndirang@cde.ca.gov](mailto:gndirang@cde.ca.gov), 916-323-5831

### Required and Authorized LEP Sub-grantee Activities

#### Required

Section 3115 (c)(1) To increase the English Proficiency by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs.

Section 3115 (c)(2) To provide high quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel.

#### Authorized

- (1) Upgrading program objectives and effective instruction strategies.
- (2) Improving the instruction program for limited English proficient children by identifying acquiring and upgrading curricula, instruction materials, educational software, and assessment procedures.
- (3) Providing tutorials and academic or vocational education for limited English proficient children and intensified instruction.
- (4) Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.
- (5) Improving the English proficiency and academic achievement of limited English proficient children.
- (6) Providing community participation programs, family literacy services and parent outreach and training activities to limited English proficient children and their families.

2012-13 Title III, Part A LEP entitlement	\$70,178
<b>Object Code - Activity</b>	
1000-1999 Certificated personnel salaries	\$2,781
2000-2999 Classified Personnel Salaries	\$18,777
3000-3999 Employee Benefits	\$3,476
4000-4999 Books And Supplies	\$1,984
5000-5999 Services and other operating expenditures	\$5,980
Administrative And Indirect Costs	\$1,202
Total Expended Amount	\$34,200

## 2012-13 Homeless Education Policy, Requirements and Implementation

The purpose of this data collection is to meet federal requirements specified in ESEA Section 722. This collection includes 1) monitoring LEAs and their compliance with key provisions of the Education for Homeless Children and Youths Act and 2) collecting contact information for each required designated LEA’s homeless liaison.

### CDE Program Contact:

Leanne Wheeler, Improvement & Accountability Division, [lwheeler@cde.ca.gov](mailto:lwheeler@cde.ca.gov), 916-319-0383  
 Mary Donnelly-Ortega, Improvement & Accountability Division, [MDonnellyortega@cde.ca.gov](mailto:MDonnellyortega@cde.ca.gov), 916-323-5113

### Homeless Education Certification

The LEA hereby assures and certifies to the California State Board of Education that the LEA has met the following requirements:

1. Designated a staff person as the liaison for homeless children and youths
  
2. Developed a written policy that supports the enrollment and retention of homeless children and youths in schools of the LEA which:
  - a) Includes policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless
  - b) Includes a dispute resolution process
  - c) Ensures that transportation is provided for a homeless child or youth to and from the school of origin if requested by the parent, guardian or homeless liaison
  
3. Disseminated public notice of the educational rights of homeless children and youths where such children and youths receive services under the provisions of the Education for Homeless Children and Youths Act.

### Homeless Liaison Contact Information

Contact first name	Abby
Contact last name	Bickford
Contact title	Director, Support Services
Contact email address (format: abc@xyz)	BickfordA@fvsd.us
Contact telephone number (format: 999-999-9999)	714-843-3281

### Homeless Education Policy and Requirements

Does the LEA have a written homeless education policy	Yes
No policy comment	

**2012-13 Homeless Education Policy, Requirements and Implementation**

The purpose of this data collection is to meet federal requirements specified in ESEA Section 722. This collection includes 1) monitoring LEAs and their compliance with key provisions of the Education for Homeless Children and Youths Act and 2) collecting contact information for each required designated LEA’s homeless liaison.

**CDE Program Contact:**

Leanne Wheeler, Improvement & Accountability Division, [lwheeler@cde.ca.gov](mailto:lwheeler@cde.ca.gov), 916-319-0383  
 Mary Donnelly-Ortega, Improvement & Accountability Division, [MDonnellyortega@cde.ca.gov](mailto:MDonnellyortega@cde.ca.gov), 916-323-5113

Provide an explanation why the LEA does not have a homeless education policy. (Maximum 500 characters)	
Date LEA’s board approved the homeless education policy	07/21/2005
Does the LEA meet the above federal requirements	Yes
Compliance comment Provide an explanation why the LEA does not comply with federal requirements. (Maximum 500 characters)	

**Title I, Part A Homeless Expenditures**

2012-13 Title I, Part A Entitlement	\$334,263
2012-13 Title I, Part A direct or indirect services to homeless children reservation	\$10,000
Amount of 2012-13 Title I, Part funds expended or encumbered for direct or indirect services to homeless children	\$0
No expenditures or encumbrances comment Provide an explanation why there is no Title I, Part A expenditures or encumbrances for homeless services. (Maximum 500 characters)	Only one student district-wide was identified and bus passes were provided through the county office.

**2012-13 Title I, Part A School Funded Staff Report**

To collect school level data, as required by ESEA, about teachers and instructional paraprofessionals in Title I, Part A programs.

**CDE Program Contact:**

Joshua Strong, Title I Policy & Program Guidance, [JStrong@cde.ca.gov](mailto:JStrong@cde.ca.gov), 916-319-0492

School Name	School Code	Public	Authorized SWP	New Title I, Part A Funded Teachers Hired	Non-ESEA Qualified Hired	Title I, Part A Funded Teachers (0.00)	Title I, Part A Funded FTE Paraprofessionals (0.00)	ESEA Qualified FTE Paraprofessionals (0.00)	ESEA Qualified FTE Paraprofessionals %	Title I, Part A Funded Administrators (0.00)	Title I, Part A Funded Support Staff (0.00)	Other Title I, Part A Funded Staff (0.00)
Cox (James H.) Elementary	6066922	Y	N	0	0	1	0	0		0	0	0
Masuda (Kazuo) Middle	6094627	Y	N	0	0	0.50	0.37	0.37	100.00%	0	0	0

### 2012-13 Title I, Part A Parental Involvement Policies

To meet federal requirements specified in ESEA Title I, Part A Section 1118(h) to review the LEAs parental involvement policies and practices to determine if the policies and practices meet the requirements of Section 1118.

**CDE Program Contact:**

Nancy Bodenhausen, Title I Policy & Program Guidance, [NBodenhausen@cde.ca.gov](mailto:NBodenhausen@cde.ca.gov), 916-445-4904

### District Parental Involvement Certification

Each LEA shall develop jointly with, agree on with, and distribute to parents of Title I children, a written Title I parental involvement policy (ESEA Section 1118(a)). The policy describes how the LEA will:

- a) Involve parents in the joint development of the LEA Plan and the processes of school review and improvement for program improvement schools under ESEA Section 1116;
- b) Help schools to plan and implement effective parental involvement activities to improve student academic achievement and school performance;
- c) Build the schools' and parents' capacity for strong parental involvement;
- d) Coordinate and integrate parental involvement strategies under Part A and under other programs as specified;
- e) Conduct, with the involvement of parents, an annual evaluation of the content and effectiveness of the parental involvement policy and use the findings of the evaluation to design more effective parental involvement; and
- f) Involve parents in the activities of the Title I schools.

Does the district have a written parental involvement policy Yes

LEA policy compliance Yes

Does your current Title I district level parental involvement policy meet the above criteria

Annual evaluation date 06/06/2013

Annual Evaluation Policy reviewed at the combined DELAC/DAC meeting.

Describe the involvement of parents during the policy evaluation process. If no evaluation occurred or if the evaluation date is not within the allowable range, provide an explanation why. (Maximum 500 char)

Parent Involvement Allocation No allocation is reserved for parent involvement because 1% of grant amount is \$5000 or less.

**2012-13 Title I, Part A Parental Involvement Policies**

To meet federal requirements specified in ESEA Title I, Part A Section 1118(h) to review the LEAs parental involvement policies and practices to determine if the policies and practices meet the requirements of Section 1118.

Describe parent involvement in decisions on the use of parental involvement set-aside.  
 (Maximum 500 characters)

**District Parental Involvement Contact Information**

Parental Involvement contact name: Sandra Dominguez-Rivera  
 Contact title: Bilingual Testing Technician  
 Contact email address: dominguez-riveras@fvsd.us  
 (format abc@xyz.zyx)  
 Contact telephone number: 714-843-3284  
 (format 999-999-9999)

**School Parental Involvement Policy Compliance Requirements**

The Title I, Part A school-level parental involvement policy describes the means to carry out:

- a) Involvement of parents in the development of the policy
- b) School-parent compacts
- c) Building of capacity for involvement of parents
- d) Accessibility and opportunities for participation of parents with limited English proficiency, parents with disabilities, and parents of migratory students

School Name	School Code	Parental Involvement Policy Exists	No Policy Comment (Max 250 char)	Meets Policy Requirements ?	Not Compliant Comment (Max 250 char)	Parental Involvement Contact Name	Parental Involvement Contact Title	Parental Involvement Contact Email Address (format abc@xyz)	Parental Involvement Contact Telephone Number (format 999-999-9999)
Cox (James H.) Elementary	6066922	Y		Y		Patrick Ham	Principal	HamP@fvsd.us	714-378-4240
Masuda (Kazuo) Middle	6094627	Y		Y		Chris Mullin	Principal	MullinC@fvsd.us	714-378-4250

## 2012-13 Title II, Part A School Class Size Reduction Report

The ESEA Act of 2001, Title II, Part A, Section 2123(a)(2)(B) allows LEAs to use ESEA Title II, Part A funds to recruit and hire highly qualified teachers to reduce class size.

**CDE Program Contact:**

Jackie Rose, Title II Leadership, [jrose@cde.ca.gov](mailto:jrose@cde.ca.gov), 916-322-9503

School Name	School Code	Total Class Size Reduction Teacher Count	ESEA Title II Part A Funded Class Size Reduction Teacher Count	ESEA Teacher Count
Courreges (Roch) Elementary	6094635	3	0	3
Cox (James H.) Elementary	6066922	3	0	3
Fulton (Harry C.) Middle	6027916	1	1	1
Gisler (Robert) Elementary	6027973	4	0	4
Masuda (Kazuo) Middle	6094627	1	1	1
Newland (William T.) Elementary	6027999	3	0	3
Oka (Isojiro) Elementary	6068605	2	0	2
Plavan (Urbain H.) Elementary	6085278	4	0	4
Talbert (Samuel E.) Middle	6071096	1	1	1
Tamura (Hisamatsu) Elementary	6027924	2	0	2

**2012-13 Title III, Part A LEP Nonprofit Private School Reimbursement**

The purpose of this data collection is to capture the documentable number of private school English learners who received Title III services during the reported fiscal year.

**CDE Program Contact:**

Patty Stevens, Title III Language Policy & Leadership Office, [pstevens@cde.ca.gov](mailto:pstevens@cde.ca.gov), 916-323-5838

School Name	School Code	Enrollment	Flagged for LEP Participation	English Learner Students Served	Participation Explanation (max 500 char)
Shoreline Christian School	6988240	191	N	0	
The Pegasus School	7005853	529	N	0	

**2011-12 Title II, Part A FY Expenditure Report, 24 Months**

A report of year-to-date expenditures and encumbrances by activity.

**CDE Program Contact:**

Jackie Rose, Title II Leadership, [jrose@cde.ca.gov](mailto:jrose@cde.ca.gov), 916-322-9503

2011-12 Title II, Part A entitlement	\$137,367
Professional development	\$6,786
Exam and test preparation	
Recruiting training and retaining	
Class size reduction	\$130,222
Administrative and indirect costs	\$359
Other allowable expenditures or encumbrances	
Total expenditures and encumbrances	\$137,367
General comment (Maximum 500 characters)	

## 2011-12 Title III Part A Immigrant YTD Obligations Report, 24 Months

A report of year-to-date obligations by activity.

### CDE Program Contact:

Pamela Lucas, Language Policy & Leadership Office, [plucas@cde.ca.gov](mailto:plucas@cde.ca.gov), 916-323-5739  
 Sandra Covarrubias, Language Policy & Leadership Office, [SCovarrubias@cde.ca.gov](mailto:SCovarrubias@cde.ca.gov), 916-319-0267

### Approved Immigrant Sub-grantee Activities

(e) ACTIVITIES BY AGENCIES EXPERIENCING SUBSTANTIAL INCREASES IN IMMIGRANT CHILDREN AND YOUTH-

(1) IN GENERAL-An eligible entity receiving funds under section 3114(d)(1) shall use the funds to pay for activities that provide enhanced instructional (opportunities for immigrant children and youth, which may include -

- (A) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;
- (B) support for personnel, including teacher aides who have been specifically trained, or are being trained, to provide services to immigrant children and youth;
- (C) provision of tutorials, mentoring, and academic or career counseling for immigrant children and youth;
- (D) identification and acquisition of curricular materials, educational software, and technologies to be used in the program carried out with funds;

**(E) basic instruction services that are directly attributable to the presence in the school district involved of immigrant children and youth, including the payment of costs of providing additional classroom supplies, costs of transportation, or such other costs as are directly attributable to such additional basic instruction services**

(F) other instruction services that are designed to assist immigrant children and youth to achieve in elementary schools and secondary schools in the United States, such as programs of introduction to the educational system and civics education; and

(G) activities, coordinated with community-based organizations, institutions of higher education, private sector entities with expertise in working with immigrants, to assist parents of immigrant children and youth by offering comprehensive community services.

2011-12 Title III, Part A Immigrant entitlement	\$9,100
<b>Object Code - Activity</b>	
1000-1999 Certificated personnel salaries	\$0
2000-2999 Classified Personnel Salaries	\$1,903
3000-3999 Employee Benefits	\$175
4000-4999 Books And Supplies	\$6,525
5000-5999 Services and other operating expenditures	\$147
Administrative And Indirect Costs	\$350
Total Expended Amount	\$9,100
General comment	

### 2011-12 Title III Part A Immigrant YTD Obligations Report, 24 Months

A report of year-to-date obligations by activity.

**CDE Program Contact:**

Pamela Lucas, Language Policy & Leadership Office, [plucas@cde.ca.gov](mailto:plucas@cde.ca.gov), 916-323-5739

Sandra Covarrubias, Language Policy & Leadership Office, [SCovarrubias@cde.ca.gov](mailto:SCovarrubias@cde.ca.gov), 916-319-0267

(Maximum 500 characters)

**2011-12 Title III, Part A LEP YTD Obligations Report, 24 Months**

A report of year-to-date obligations by activity.

**CDE Program Contact:**

Patty Stevens, Title III Language Policy & Leadership Office, [pstevens@cde.ca.gov](mailto:pstevens@cde.ca.gov), 916-323-5838  
 Geoffrey Ndirangu, Language Policy & Leadership Office, [gndirang@cde.ca.gov](mailto:gndirang@cde.ca.gov), 916-323-5831

**Required and Authorized LEP Sub-grantee Activities**

**Required**

Section 3115 (c)(1) To increase the English Proficiency by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs.

Section 3115 (c)(2) To provide high quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel.

**Authorized**

- (1) Upgrading program objectives and effective instruction strategies.
- (2) Improving the instruction program for limited English proficient children by identifying acquiring and upgrading curricula, instruction materials, educational software, and assessment procedures.
- (3) Providing tutorials and academic or vocational education for limited English proficient children and intensified instruction.
- (4) Developing and implementing elementary school or secondary school language instruction educational programs that are coordinated with other relevant programs and services.
- (5) Improving the English proficiency and academic achievement of limited English proficient children.
- (6) Providing community participation programs, family literacy services and parent outreach and training activities to limited English proficient children and their families.

2011-12 Title III, Part A LEP entitlement	\$70,025
<b>Object Code - Activity</b>	
1000-1999 Certificated personnel salaries	\$18,743
2000-2999 Classified Personnel Salaries	\$22,734
3000-3999 Employee Benefits	\$10,681
4000-4999 Books And Supplies	\$12,526
5000-5999 Services and other operating expenditures	\$3,941
Administrative And Indirect Costs	\$1,400
<b>Total Expended Amount</b>	<b>\$70,025</b>



# FOUNTAIN VALLEY SCHOOL DISTRICT

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10055 Slater Ave. • Fountain Valley, CA 92708 • 714.843.3200 • [www.fvsd.k12.ca.us](http://www.fvsd.k12.ca.us)

## MEMORANDUM

**TO:** Marc Ecker, Superintendent

**FROM:** Abby Bickford, Director, Support Services

**SUBJECT:** **MOU between OCDE and FVSD for Special Schools Program**

**DATE:** June 3, 2013 – for June 13, 2013 Board Meeting

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### **BACKGROUND**

Pursuant to the authority established in Education Code Sections 56195, 56195.1, 56195.3 and 56195.5, Orange County Department of Education (OCDE) may provide for the education of individual pupils in special education programs who reside in other districts or countries. The OCDE Division of Special Education Services operates the OCDE Special Schools Program to provide special education programs and services to individuals with exceptional needs requiring intensive educational services, including a regional deaf and hard of hearing program. Agreement is effective the period of July 1, 2013 through June 30, 2014.

### **RECOMMENDATION**

It is recommended that the Board of Trustees approve the MOU between Orange County Department of Education and Fountain Valley School District.

/sb  
Attachments

**Orange County Department of Education  
Special Schools Program**

<b>2013-14 Preliminary 1 Budget</b>	<b>Object</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2012-13</b>	<b>2013-14</b>
<b>2012-13 average enrollment of 493</b> <b>2013-14 average enrollment of 463</b>	<b>Code</b>	<b>Unaudited Actuals</b>	<b>Estimated Actuals Budget</b>	<b>Actual as of 5/28/13</b>	<b>Preliminary 1 Budget</b>
Restricted Fund Balance Low Incidence	9791	456,057	494,538	494,538	450,496
Reserve for Economic Uncertainty	9791	893,194	882,512	882,512	886,322
Adjustment to ending balance					
Refund to districts					
Categorical Flexibility					
Categorical Sweep					
<b>Total Beginning Balance</b>	<b>9791</b>	<b>1,349,251</b>	<b>1,377,050</b>	<b>1,377,050</b>	<b>1,336,818</b>
<b>Revenue</b>					
Revenue Limit	8091&8099	2,926,576	2,834,886	0	2,979,250
AB602 Allocation	8097	1,761,492	1,732,131	0	1,777,867
<b>AB602 Allocation</b>		<b>4,688,068</b>	<b>4,567,017</b>	<b>0</b>	<b>4,757,117</b>
Prior Year Apportionment	8319	7,188	0	0	0
Other State Revenue	8590	0	0	0	0
<b>Other State Revenue</b>		<b>7,188</b>	<b>0</b>	<b>0</b>	<b>0</b>
Interagency Fees Bill Back to Districts	8677	20,543,473	21,665,689	20,003,098	20,201,859
Interagency Fees Special Circumstance Aid	8677	3,672,677	4,270,915	3,131,971	4,200,000
Other revenue	8631	6,000	0	0	0
Other Local Revenue/EE contract	8699	1,125	80,625	0	80,625
<b>Other Local Revenue</b>		<b>24,223,275</b>	<b>26,017,229</b>	<b>23,135,069</b>	<b>24,482,484</b>
Transfer in from Other Fund	8919				
Contribution from Unrestricted	8980				
Contribution for Indirect	8981	504,222	433,938	0	437,370
Contribution from Restricted	8990	157,992	23,316	23,316	0
Contribution to Restricted Routine Maint.	8991	-210,390	-208,260	0	-208,260
Contribution to Food Services	8992	-107,911	-136,829	0	-122,287
Contribution to Special Ed	8993	0	0	0	0
<b>Total Contributions</b>		<b>343,912</b>	<b>112,165</b>	<b>23,316</b>	<b>106,823</b>
<b>Total Revenue</b>		<b>30,794,123</b>	<b>32,073,462</b>	<b>24,535,435</b>	<b>30,683,243</b>

**Orange County Department of Education  
Special Schools Program**

APPENDIX A

<b>2013-14 Preliminary 1 Budget</b>	<b>Object</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2012-13</b>	<b>2013-14</b>
<b>2012-13 average enrollment of 493</b> <b>2013-14 average enrollment of 463</b>	<b>Code</b>	<b>Unaudited Actuals</b>	<b>Estimated Actuals Budget</b>	<b>Actual as of 5/28/13</b>	<b>Preliminary 1 Budget</b>
<b>Expenditures</b>					
Teachers Salaries	1100	6,682,175	6,515,945	5,335,441	6,012,795
Pupil Support Salaries	1200	1,271,682	1,334,729	1,077,869	1,354,300
Supervisor/Administrators	1300	971,379	910,323	763,116	955,859
Other Certificated	1900	1,016,617	1,046,890	874,832	1,074,143
<b>Total Certificated</b>		<b>9,941,853</b>	<b>9,807,887</b>	<b>8,051,258</b>	<b>9,397,097</b>
Instructional Assistants	2100	6,617,258	6,786,227	5,575,481	6,767,326
Classified Support Salaries	2200	543,820	548,592	438,800	598,523
Supervisors/Managers	2300	465,028	442,325	358,141	520,911
Clerical/Technical	2400	779,317	708,100	618,772	736,924
Short term Sub	2900	0	0	0	0
<b>Total Classified</b>		<b>8,405,422</b>	<b>8,485,244</b>	<b>6,991,194</b>	<b>8,623,684</b>
STRS/PERS	3100-3200	1,709,404	1,665,157	1,442,622	1,646,693
Medicare and PARS	3300	235,996	247,687	198,418	235,611
Health and Welfare	3400	4,300,792	4,444,476	3,707,381	4,818,399
Unemployment	3500	289,513	204,428	164,383	8,753
Worker's Comp	3600	260,588	302,929	246,809	285,404
PERS Reduction	3800	187,190	136,977	120,170	149,076
Life Insurance/Other	3900	30,753	45,026	37,436	43,671
<b>Total Benefits</b>		<b>7,014,236</b>	<b>7,046,680</b>	<b>5,917,220</b>	<b>7,187,607</b>
<b>Federal ARRA/Jobs Expenditures</b>	<b>site 625</b>	<b>182,429</b>	<b>-</b>	<b>-</b>	<b>-</b>
Textbooks	4100	0	0	0	516
Other Books	4200	564	1,400	820	900
Materials and Supplies	4300	199,566	250,783	160,160	505,377
NonCapitalized Equipment	4400	71,723	51,889	37,393	96,253
<b>Total Books and Supplies</b>		<b>271,852</b>	<b>304,072</b>	<b>198,373</b>	<b>603,046</b>
Travel and Conference	5200	104,089	112,360	91,316	122,750
Dues and Membership	5300	1,149	1,295	1,065	1,630
Utilities	5500	147,031	179,519	129,386	180,100
Rents/Leases	5640	430,529	521,575	42,928	457,682
Repairs/Maintenance	5600	30,006	46,753	23,075	108,035
Transfer of Direct Costs	5700	16,766	19,796	5,335	19,732
Professional/Consulting Services	5800	129,627	162,825	62,843	146,358
Communications	5900	76,294	76,415	57,687	77,278
<b>Total</b>		<b>935,490</b>	<b>1,120,538</b>	<b>413,635</b>	<b>1,113,565</b>
Improvement on Sites	6100	0	300,000	-170,072	0
Buildings	6200	170,072	0	0	0
Capitalized Equipment	6400/6500	5,237	44,100	6,581	8,000
<b>Total</b>		<b>175,309</b>	<b>344,100</b>	<b>-163,490</b>	<b>8,000</b>
Support Costs	7340	1,986,260	2,001,624	0	2,010,112
Support Contributions	7341	504,222	433,938	0	437,370
IFT out-other authorized IFT	7619	0	0	0	0
<b>Total Support</b>		<b>2,490,482</b>	<b>2,435,562</b>	<b>0</b>	<b>2,447,482</b>
<b>Total Expenditures</b>		<b>29,417,073</b>	<b>29,544,083</b>	<b>21,408,189</b>	<b>29,380,481</b>
Restricted Fund Balance Low Incidence	9780/9740	494,538	450,496		421,347
Reserve for Economic Uncertainty	9780/9740	882,512	2,078,882		881,414
<b>Ending Fund Balance</b>		<b>1,377,050</b>	<b>2,529,378</b>	<b>3,127,245</b>	<b>1,302,761</b>
<b>Total bill back</b>		<b>20,543,473</b>	<b>21,665,689</b>		<b>20,201,859</b>
Average enrollment		506.67	<b>493.00</b>		<b>463.00</b>
Estimated Bill Back per pupil		<b>40,546.06</b>	<b>43,947</b>		<b>43,633</b>
Proposed Refund to District		-	<b>2,419</b>		-
Actual billing		<b>40,546</b>	<b>41,528</b>		<b>43,633</b>

	2013-14 (B1)
1. Average number of pupils transported	273
2. Maximum number of billable days	202
3. Classified Salaries	88,047
4. Employee Benefits	28,632
5. Supplies	50
6. Travel/Conferences/Dues/Memberships	1,384
7. Other Expenses	-
8. Contracts with Private Contractors (5100)	3,360,300
9. Payments to Private Carriers (5830)	25,000
10. Other Services/Operating Expenses	100
11. Equipment/Replacement	-
12. Therapy Transportation	
Subtotal Direct Costs	3,360,300
13. Direct Support costs	143,213
14. Total Direct/Direct Support Costs	4.26%
15. Indirect Support Costs @ 1%	1,432
16. Total Transportation Cost Allocation	3,504,945
17. State Transportation Entitlement	1,626,235
Projected Reduction	(190,274)
18. Beginning Fund Balance	-
Total Revenue	1,435,961
19. Excess Transportation Cost	2,068,984
19a. *Per Pupil Excess Cost Line19/Line1	<b>7,583</b>
19b. *Per Day/Pupil Excess Cost Line19a/Line2	<b>37.54</b>

Memorandum of Understanding Between  
The Orange County Superintendent of Schools  
And  
“Fountain Valley School District”  
2013-2014

The Orange County Superintendent of Schools, which operates the Division of Special Education Services within the Orange County Department of Education, hereinafter referred to as “OCDE” and the “Fountain Valley School District,” herein referred to as “District,” and collectively referred to herein as the “Parties,” mutually agree as follows (Agreement):

1. Basis of Agreement

Pursuant to the authority established in Education Code Sections 56195, 56195.1, 56195.3 and 56195.5, OCDE may provide for the education of individual pupils in special education programs who reside in other districts or counties. The OCDE Division of Special Education Services operates the OCDE Special Schools Program to provide special education programs and services to individuals with exceptional needs requiring intensive educational services, including a regional deaf and hard of hearing program.

2. Term of Agreement

This Agreement is effective for the period beginning July 1, 2013, and ending June 30, 2014.

3. Acknowledgment of Special Education Funding Formula

It is acknowledged that, in accordance with Part 30 of the Education Code, Chapter 7.2, Section 56836 et seq., the California State funding formula for special education programs, services and administration generates an entitlement based on the average daily attendance of pupils in the local education agencies that comprise a Special Education Local Plan Area (SELPA). It is further acknowledged that the SELPA base year calculations for special education funding under Assembly Bill 602 (AB 602) include a dollar amount that is transferred back to the SELPA of residence for pupils served in special education programs prior to implementation of AB 602. The Parties acknowledge that both the distribution of these special education funds and the District's fiscal responsibility for students served outside the SELPA of residence are determined by the Local Plan of the SELPA of residence.

4. Scope of Program and Referral Process to OCDE

OCDE shall conduct special education programs and services for those eligible pupils of the District referred by their Individualized Education Program (IEP) Teams when it is jointly determined by the District and OCDE that the pupil's educational needs as specified in the pupil's IEP can be appropriately met by the programs and services operated by OCDE. Prior to offering placement in any OCDE Special Schools Program, the District shall contact the appropriate OCDE Special Schools Principal to discuss a possible referral and the appropriateness of the OCDE Special Schools Program placement. If the referral seems appropriate, the District shall obtain from the parent authorization to release information to OCDE and submit an OCDE referral packet to the appropriate OCDE Special Schools Principal

as well as schedule a visitation with the parent. OCDE referral packets are available on-line at <http://www.ocde.us/sped/Pages/referral.process.aspx>

Upon review of the referral packet and site visit by parent, the OCDE Special Schools Principal and District representative will coordinate an IEP team meeting for purposes of discussing possible placement in an OCDE Special Schools Program. OCDE shall maintain and provide special education programs for District pupils during the 2013-2014 school year within the administrative parameters established by the Special Education Fiscal Advisory Committee. Class size ranges and student-adult ratios shall be maintained in a manner which allows OCDE to meet the programmatic, health and safety needs of the pupils.

5. Responsibility of School District of Residence

The District and OCDE acknowledge that the District, as the pupil's district of residence, maintains primary responsibility as the local education agency (LEA) to ensure the pupil receives a free appropriate public education. In the event a pupil participating in an OCDE Special Schools Program moves out of the District, the District shall immediately provide OCDE written notice of the pupil's change in residence, including the new school district of residence, if known. Similarly, OCDE shall immediately notify District in the event a parent reports a change in residence, including the new school district of residence, if known.

6. Annual and Triennial Reviews

The District shall be notified of annual reviews scheduled for its pupils participating in an OCDE Special Schools Program and may provide a representative who will participate in the development of the annual IEP. For initial placement, triennial review, recommendation for

home instruction, or a change in eligibility or services specified on the current IEP, a District representative who is authorized to approve or disapprove the allocation of specified District resources necessary for the implementation of the pupil's IEP shall attend the IEP team meeting. For pupils enrolled in an OCDE Special Schools Program who are participating in a general education program on the school site in the school district where the Special Schools Program is located ("Host District") OCDE will work with the Host District to provide a general education teacher at IEP team meetings. In the event the Host District is unable to provide a general education teacher for the IEP team meeting, the District agrees to provide a general education teacher unless otherwise waived in writing by the pupil's parent in accordance with the Individuals with Disabilities Education Act (IDEA) and State law. For all other pupils enrolled in an OCDE Special Schools Program, the District agrees to provide a general education teacher at IEP team meetings unless otherwise waived in writing by pupil's parent in accordance with the IDEA and State law. Subject to approval by the pupil's parents, the general education teacher and/or other IEP team participants may use alternative means of meeting participation, such as video conferences and conference calls.

Progress reports relating to goals and objectives in a pupil's IEP shall be sent by OCDE to parents per the pupil's IEP schedule for progress reporting and to the Director of Special Education of the District upon request. When requested by District or parent, an updated report shall be provided if there is no current progress report whenever a pupil is scheduled for an IEP review or when pupil's enrollment in OCDE is terminated.

7. Integration/Mainstreaming Opportunities

The Host District where OCDE Special Schools Programs operate often provide opportunities for pupils enrolled in an OCDE Special Schools Program to integrate with non-disabled typical peers during the school day. These opportunities are typically in non-core curriculum areas such as physical education, art, music, assemblies, recess and lunch. Some pupils enrolled in an OCDE Special Schools Program will participate in core curriculum activities for a portion of the school day in a program operated by the Host District, however, such pupils are supervised by OCDE staff at all times during such activities. In the event a pupil enrolled in an OCDE Special Schools Program is participating in core curriculum activities in a program operated by the Host District for more than 50% of the school day, the Host District will be reimbursed for any costs incurred resulting from such pupil's participation, upon OCDE's receipt of appropriate documentation of such costs.

8. Assessments/Independent Educational Evaluations

OCDE and District shall coordinate and collaborate in conducting assessments for pupils participating in an OCDE Special Schools Program. In the event OCDE staff is not available to conduct a requested assessment, OCDE shall notify the District and/or District's SELPA to assist in conducting such assessment(s).

In the event a request is made for an independent educational evaluation (IEE), OCDE shall immediately forward such request to the District and the District, in collaboration with OCDE, shall determine how to respond to the request for an IEE. If the District receives a request for assessment or IEE for a student referred to or enrolled in an OCDE Special Schools Program, the District shall immediately notify OCDE of the request and collaborate with OCDE as to how to

respond. OCDE and/or the District may also schedule an IEP team meeting to further discuss the requested IEE or assessment.

9. Pupil Count

A count shall be taken of the number of pupils enrolled in OCDE's Special Schools Program as of the first day of each calendar month, July 1, 2013 through June 1, 2014. A pupil shall be counted as "enrolled" in an OCDE Special Schools Program on the first day of attendance in the program or fourteen (14) days after the IEP team has met and an approved IEP has been executed for the pupil's educational placement in an OCDE Special Schools Program, whichever occurs sooner. Pupils continuing in an OCDE Special Schools Program from the previous school year shall be counted as "enrolled" on the first school day in September unless written notification of withdrawal is received from either the parent or district of residence. If a continuing pupil has not attended school by the eleventh (11<sup>th</sup>) day of the first school month, OCDE shall notify the district of residence and a determination shall be made regarding continuing enrollment. In the event either OCDE or District are informed that a pupil has been withdrawn by the parent from an OCDE Special Schools Program, each agency shall immediately notify the other of such withdrawal. Any pupil withdrawn by the parent from an OCDE Special Schools Program is no longer counted as "enrolled" or considered a continuing pupil for the following school year.

10. Definitions

a. "Special Education Fiscal Advisory Committee" shall be a committee comprised of the Orange County Special Education Local Plan Area Directors, Chief Business Officials

representing each SELPA and OCDE representatives including the Chief of Special Education Services Division, Director of Special Schools and Programs, Business Administrator, and the Assistant Superintendent of Business Services, or designee.

b. “Regional Special Education Programs” are the special education classes and support services operated by OCDE for severely disabled and medically fragile pupils, pupils with low incidence disabilities, pupils with autism spectrum disorders, pupils with emotional disturbances and other eligible pupils.

c. “Regional Deaf/Hard of Hearing (D/HH) Program” shall include classes and services operated by OCDE for Deaf and Hard of Hearing pupils who are learning through total communication, utilizing sign language, note-takers, oral speech and residual hearing.

d. “Regional Oral Deaf Program” shall include classes and services operated by OCDE for Deaf and Hard of Hearing pupils who are learning through oral and written communication using oral speech, speech reading, residual hearing, auditory devices and cochlear implants.

e. “Special Education Program Income” shall be defined as the sum of all State and Federal funds generated by or on behalf of pupils transferred to regional programs operated by OCDE Special School Programs under this Agreement. For the purposes of this Agreement:

f. “Special Education Program Expenditures” shall include Direct Costs, Direct Support Costs and Indirect Cost of Special Schools Programs.

g. “Average Cost Per Pupil” shall refer to the Special Education Program Expenditures attributable to the program divided by the average number of pupils enrolled during the year.

h. "Average Number of Pupils" shall refer to the total of the number of pupils counted on the first school day of each calendar month divided by the number of calendar months in the period specified.

#### 11. Funding

In consideration of the enrollment of pupils in special education programs conducted by OCDE, the SELPA and/or the school district transferring pupils to the regional programs operated by OCDE agree to pay the average cost per pupil based on expenditure categories and ratios reviewed by the Special Education Fiscal Advisory Committee and shall provide for program funding as follows:

a. The District shall be responsible for the Average Cost per Pupil in an OCDE Special Schools Program, including the Regional Deaf/Hard of Hearing Program, multiplied by the average number of pupils enrolled, minus Special Education Program income received by OCDE for the purpose of educating said pupils including, but not limited to Revenue Limit, AB 602 funds, and Federal I.D.E.A. Local Assistance Grant funds. The District shall be responsible for the Average Cost Per Pupil in the Regional Oral Deaf Program multiplied by the average number of pupils enrolled, minus Special Education Program income received by OCDE for the purpose of educating said pupils including, but not limited to Revenue Limit, AB 602 funds, and Federal I.D.E.A. Local Assistance Grant funds.

b. Special Circumstance Assistant (SCA). The District, as specified in its SELPA's Local Plan, shall be responsible for the full cost of additional personnel required for the benefit of and specified in the IEP for individual pupils who are residents of the District.

c. The following documents shall be used as a basis for all figures reported:

- (1) Various Program Cost Reports
- (2) State Form 01
- (3) In-House Accounting Reports

d. OCDE Special Schools Program income and expenditures shall be listed in accordance with The California School Accounting Manual Standardized Account Code Structure for Special Education as of April 19, 1999, with a summary page as shown in Appendix A, incorporated herein.

e. Indirect cost for Special Education Programs operated by OCDE shall be at the State approved rate not to exceed 7.5% of total Program expenditures.

f. OCDE shall bill the District on a monthly basis and forward invoices to the District's accounting department.

12. Related Services/Designated Instructional Services (DIS)

OCDE provides the following related services as part of its Special Schools Programs: Speech-Language Pathology Services, Adapted Physical Education, Physical Therapy, Occupational Therapy, Health and Nursing, Specialized Physical Health Care, Vocational Counseling, Adult Transition, Assistive Technology, Vision Training, Orientation and Mobility, Behavior Management/Intervention and Psychological Counseling. In addition to the above, as part of its Regional D/HH Program and Regional Oral Deaf Program, OCDE provides Audiological services and Sign Language Interpreters. Any other related services necessary for the pupil to benefit from the special education program shall be provided by the District or as

otherwise agreed to by OCDE and the District, including translator services at IEP team meetings and/or translation of documents. In addition, OCDE shall separately bill the District for the services provided by an SCA as required by the pupil's IEP.

13. Home Instruction

When a pupil is absent from school for more than ten (10) consecutive school days as a result of a medical condition and is expected to have an extended health related absence, the pupil's IEP team shall review the IEP and determine appropriate educational services. A District representative who is authorized by the District's Director of Special Education to approve or disapprove the allocation of specified District resources necessary for the implementation of the pupil's IEP shall participate in the IEP team meeting when considering a placement for home or hospital instruction. When recommending placement for home or hospital instruction, the IEP team shall consider documentation from the pupil's treating physician indicating the pupil's condition, verifying that the condition prevents the pupil from attending school and providing a projected date for the pupil's return to school. Any in-home instruction, including other related services, shall be provided by the District or as otherwise agreed to by OCDE and the District. In the event the pupil is hospitalized in a facility located outside of the District, it is the District's responsibility to inform the parent that instruction will be provided in accordance with Education Code section 48207 and 48208. In either circumstance, it may be necessary to exit the pupil from OCDE in order for the District to provide the necessary in-home instruction or for the pupil to receive hospital instruction. In the event OCDE and the District agree that OCDE will provide

in-home or hospital instruction to the pupil, OCDE shall separately bill the District for such services.

14. Transportation

a. Transportation by the Orange County Department of Education

The District shall provide transportation for its pupils participating in an OCDE Special Schools Program unless otherwise agreed between the District and OCDE. In the event OCDE agrees to transport a pupil, the District shall be responsible for the difference between the Direct and Direct Support Cost of home-to-school transportation as shown on the annual State Transportation Report plus one percent (1%) indirect support costs and the State transportation allocation received by the OCDE on a per pupil basis pursuant to Appendix B, incorporated herein. The District shall pay for the full cost of one-on-one transportation assistants as specified in the pupil's IEP. In the event OCDE is transporting five or more District pupils from one Special Schools Program site, the District shall provide OCDE written notice on or before December 1 of each year of any proposed changes in the number of students requiring OCDE transportation for the following school year. Absent appropriate notice from the District of any proposed change in transportation for the following school year, the District may be solely responsible for funding the costs related to such change in transportation. Similarly, OCDE shall provide the District written notice on or before December 1 of each year of any proposed changes in OCDE's transportation services, not including cost projections, for the following school year.

b. Transportation by District

Districts transporting pupils to an OCDE Special Schools Program shall ensure that buses arrive at the school site with sufficient time to unload students prior to the beginning of the instructional day and to load them at the end of the instructional day. Delays requiring either overtime supervision or causing portions of the instructional program to be missed and subsequently made up may result in charges to the District for additional costs incurred by OCDE related to such delays.

15. Due Process and Complaints

OCDE and District agree to collaborate and fully cooperate in any due process proceeding involving a pupil currently attending or formerly enrolled in an OCDE Special Schools Program, including resolution sessions, mediations and hearings, as well as coordinating witness availability and producing documents regarding the pupil.

In the event OCDE is named as the sole LEA in a due process complaint, OCDE and District agree that District, as the pupil's school district of residence, is a necessary party to the due process proceedings.

OCDE and District shall also fully participate in the investigation and provision of documentation related to any complaint filed with the State of California, the Office for Civil Rights, or any other State and/or federal governmental body or agency.

16. Estimated Billing

The estimated billing for 2013-2014 will be based on actual information for 2012-2013 plus COLA as set forth in the most current State Budget plus any budgeting projections for step and column, and salary and benefit increases.

17. Final Accounting

An accounting accompanied by completed Appendices A and B with appropriate supporting documentation shall be sent to each District by September 15 of the following year. In addition, OCDE shall provide a quarterly expenditure report to the District's Director of Special Education. Corrections to prior year OCDE Special Schools Program costs resulting from adjustments to income or expenditure calculations shall be credited or billed to the District affected by the correction or adjustments.

18. Projected Enrollment/Facilities and Staffing Needs

In order to assist OCDE in planning for both facilities and staffing needs for its programs, each District shall submit to OCDE, in writing, on or before December 1 of each year, the projected number of pupils expected to be transferred to OCDE programs for special education and support services in the following school year. Absent a projection, the number of District pupils reported in the current year December 1 Federal Pupil Count shall be used for facilities, staffing and budget planning by OCDE for the following school year. In the event the District intends to withdraw five (5) or more pupils from a specific OCDE Special Schools Program site or enroll five (5) or more pupils in a specific OCDE Special Schools Program site for the following school year, the District shall notify OCDE in writing of such intention on or before

December 1 of each year. OCDE shall forward such written notice to the Special Education Fiscal Advisory Committee for its review and consideration. Absent appropriate notice from the District of any proposed change in enrollment in an OCDE Special Schools Program site for the following school year, the District may be solely responsible for funding the costs related to such change in enrollment.

If the District is a Host District for any OCDE Special Schools Program, the District shall submit to OCDE, in writing, on or before December 1 of each year, notice of any proposed facilities projects, including but not limited to modernization or new construction projects at the school site where the OCDE Special Schools Program is located, as well as any potential impact such projects may have on the operation of an OCDE Special Schools Program, including opportunities for integration with typical peers at the Host District school site. In the event any such project would require relocation of an OCDE Special Schools Program, the District shall provide OCDE with at least one (1) year prior written notice to allow OCDE sufficient time to plan accordingly. OCDE shall forward such written notice to the Special Education Fiscal Advisory Committee for its review and consideration.

In the event OCDE intends to close a Special Schools Program in which District pupils are enrolled, OCDE shall notify the District in writing of such intention on or before December 1 of each year.

19. Program Cost for 2013-2014

On or before fifteen (15) days after the release of the May revise each year, the Orange County Superintendent of Schools shall compute the projected Special Education Program Income and Special Education Program Expenditures for the following year with an Average



21. No Waiver

The failure of OCDE in any one or more instances to insist upon strict performance of any of the terms of this Agreement or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon such terms or option on any future occasion.

22. Hold Harmless

To the extent permitted by law, and except for the acts or omissions of employees, agents and officers of the District, OCDE agrees to hold harmless, indemnify and defend the District and its governing board, officers, agents and employees from all claims, demands, liabilities, losses, damages, or expenses of any nature whatsoever arising from or connected with OCDE's performance of services during the term of this Agreement. To the extent permitted by law, and except for the acts or omissions of employees, agents and officers of OCDE, the District agrees to hold harmless, indemnify and defend OCDE and its governing board, officers, agents and employees from all claims, demands, liabilities, losses, damages, or expenses of any nature whatsoever arising from or connected with the District's performance of services during the term of this Agreement.

23. Complete Agreement

This Agreement is the complete Agreement of the Parties. Any amendments hereto shall be in writing and shall be dated and executed by both Parties.

24. Applicable Law

This Agreement is governed by California state and federal law, and shall be interpreted as if jointly drafted by the Parties to this Agreement.

25. Counterparts

This Agreement may be signed in counterparts. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement. Facsimile signatures shall be deemed as binding as original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

APPROVED BY:

ORANGE COUNTY SUPERINTENDENT OF SCHOOLS

OCDE – [NAME]

\_\_\_\_\_  
DISTRICT – [NAME]

BY: \_\_\_\_\_  
(Authorized Agent)

BY: \_\_\_\_\_  
(Authorized Agent)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE APPROVED BY COUNTY  
SUPERINTENDENT OR DISTRICT BOARD:

cc: SELPA

APPROVED AS TO FORM:

DATE: 5/17/13

LYSA M. SALTZMAN, COUNSEL  
ORANGE COUNTY DEPARTMENT OF EDUCATION

BY Lysa M. Saltzman ATTORNEY

APPENDIX A

SUMMARY PAGE OF CALIFORNIA SCHOOL ACCOUNTING MANUAL  
STANDARDIZED ACCOUNT CODE STRUCTURE FOR SPECIAL EDUCATION

APPENDIX B

OCDE SPECIAL SCHOOLS TRANSPORTATION COSTS



# FOUNTAIN VALLEY SCHOOL DISTRICT

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10055 Slater Ave. • Fountain Valley, CA 92708 • 714.843.3200 • [www.fvsd.k12.ca.us](http://www.fvsd.k12.ca.us)

## FOUNTAIN VALLEY SCHOOL DISTRICT SUPPORT SERVICES

### MEMORANDUM

**TO:** Anne Silavs, Assistant Superintendent, Instruction

**FROM:** Abby Bickford, Director, Support Services

**SUBJECT:** **American Psychiatric Foundation Grant**

**DATE:** May 31, 2013 – for June 13, 2013 Board Meeting

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### **BACKGROUND**

The American Psychiatric Foundation Grant will provide funding to be used only for the successful promotion and implementation of the *Typical or Troubled?* School Mental Health Education Program: such as: engaging a mental health professional to assist with delivery of the training if one is not available; promoting the program and encouraging the highest attendance at the training; or for the presenters' travel over a long distance. Funds can also be utilized to encourage maximum attendance at the training. The funding will allow for the implementation of the program at Fulton, Masuda and Talbert Middle Schools.

### **RECOMMENDATION**

It is recommended that the Board of Trustees approve the Grantee Contract for The American Psychiatric Foundation for June 1, 2013 through June 30, 2014 and authorize the Superintendent or designee to sign all documents.

sb

## **Grantee Contract Terms and Conditions of Grants**

### Amount Funded

The American Psychiatric Foundation is pleased to award a grant of **\$1,000** to **Fountain Valley School District** for implementation of the *Typical or Troubled?* School Mental Health Education Program.

### Term of Grant

The term of this grant is June 1, 2013 – June 30, 2014. Requests to extend the term of the grant, including justification, must be submitted in writing to the APF for approval at least 60 days prior to the end of the grant term. All approved modifications will be in writing and signed by both parties.

### Use of Funds

The use of this grant is restricted. Grant funds received are to be used **ONLY** for the successful promotion and implementation of the *Typical or Troubled?*™ program: such as: engaging a mental health professional to assist with delivery of the training if one is not available; promoting the program and encouraging the highest attendance at the training; or for the presenters' travel over long distances in rural areas. Also, it is acceptable to use funds to encourage maximum attendance at the training. Examples of acceptable incentives are: school supplies, bookmarks, or mouse pads. *However*, if you choose to supply specific items as an incentive information from the *Typical or Troubled?*™ program must be included on the item such as the name of the program, the warning signs, or other relevant information taken directly from the program -- Notice, Talk Act. Gift cards are not an acceptable use of funds. Any unused portion of the grant must be returned to the Foundation.

### Project Coordinator

The grantee organization must identify an individual who will represent the organization in its interactions with the Foundation on all matters related to the grant throughout the grant term.

### Personnel Changes

If it becomes necessary to replace the originally designated Project Coordinator or other staff that are responsible for the successful completion of the grant activities, the grantee is required to secure approval of the Foundation. The request for approval of personnel changes should be submitted to the Foundation in writing and include an explanation as to the reasons requiring the change and the name of the newly designated individual including their email and phone number.

The Foundation holds the right to reference this grant award, the results of its research and the Foundation's support in its own promotional and fundraising activities.

Report Requirements

- 1) The Project Coordinator must mail in to the Foundation all completed evaluation forms (pre-test and post evaluation forms) collected from the attendees of their Typical or Troubled programs;
- 2) 2) The Project Coordinator must participate in all technical assistance conference calls (including one pre training and one post training call) associated with the grant program. Dates of the conference calls are in the attached award letter. Also, notification of the conference calls will be sent via email to the Project Coordinator.

Indemnification

As a condition of this grant, the grantee agrees to hold harmless and indemnify APF, American Psychiatric Association, its subsidiary organizations, and their directors, officers, employees and agents against any costs or damages arising out of any claim, action or proceeding arising out of or resulting from work performed under this grant and/or APF's support of grantee.

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*I have read and agree to the 'Terms and Conditions' as listed above and am authorized to sign on behalf of the organization referenced below.*

\_\_\_\_\_  
Project Coordinator /Contact Name

\_\_\_\_\_  
Paul T. Burke  
Executive Director  
American Psychiatric Foundation

\_\_\_\_\_  
School Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
School Name/Financial Institution to which the grant check should be made payable.

---

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Receipt address and contact name of School/Financial Institution

Please return the signed agreement to: Tatiana Claridad, [tclaridad@psych.org](mailto:tclaridad@psych.org) or American Psychiatric Foundation, 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209.

**If you should have any questions regarding this contract, please contact Tatiana Claridad at [tclaridad@psych.org](mailto:tclaridad@psych.org) or (703) 907-7894.**

FOUNTAIN VALLEY SCHOOL DISTRICT  
**Curriculum/Instruction**

**MEMORANDUM**

**TO:** Marc Ecker, Superintendent  
**FROM:** Anne Silavs, Assistant Superintendent, Instruction  
**SUBJECT:** *Recognition of FVSD Teachers Completing Two-Year  
BTSA Induction Program*  
**DATE:** May 23, 2013

=====

**BACKGROUND**

It is an interest of the Board of Trustees to recognize commitment to the teaching profession and our students and therefore, the Board wishes to recognize the following 14 teachers who have completed the Fountain Valley School District's rigorous two-year Induction Program and are now eligible to receive their clear teaching credential. The District recognizes their dedication and hard work as well as that of their mentors who supported them while they completed the program.

Participating Teacher: Kelly Blanchard, Newland School, Mentor: Kim Knotts

Participating Teacher: Rebecca Daniel, Masuda Middle School, Mentor: Thomas Warf

Participating Teacher: Katie Daniels, Tamura School, Mentor: Martha Anderson

Participating Teacher: Elizabeth Hogrebe, Fulton Middle School, Mentor: Mark Holman

Participating Teacher: Alyssa Gaebel, Fulton Middle School, Mentor: Staci Flores

Participating Teacher: Jessica Katz, Fulton Middle School, Mentor: Beth Fockler

Participating Teacher: Peny McMahon, Courreges School, Mentor: Kathy Lewis

Participating Teacher: Kristin Monsoor, Tamura School, Mentor: Martha Anderson

Participating Teacher: Viet Nguyen, Talbert Middle School, Mentor: Beth Fockler

Participating Teacher: Marianne Owen, Oka School, Mentor: Kathy Lewis

Participating Teacher: Robin Parker, Talbert Middle School, Mentor: Brooke James

Participating Teacher: Nicole Roquemore, Newland School, Mentor: Kim Knotts

Participating Teacher: James Tilka, Newland School, Mentor: Terry Johnston

Participating Teacher: Sara Wadhvani, Masuda Middle School, Mentor: Jeff Siemens

Fountain Valley School District  
**BUSINESS SERVICES DIVISION**  
DFS/12-13 - 29

M E M O R A N D U M

TO: Stephen McMahon, Assistant Superintendent, Business Services  
FROM: Scott R. Martin, Director, Fiscal Services  
SUBJECT: **Approval of RESOLUTION 2013-27 Education Protection Account  
(EPA) Funding and Spending Determinations**  
DATE: June 6, 2013

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**BACKGROUND**

In November of 2012, Proposition 30, The Schools and Local Public Safety Protection Act of 2012, was approved by the voters. Tax revenues from Proposition 30 are being deposited at the State level into a newly created Education Protection Account (EPA). Funds from this account are dispersed to school districts as well as other agencies.

Pursuant to Article XIII, Section 36 of the California Constitution, school districts, county offices of education, and community college districts are required to determine how the moneys received from the Education Protection Account are spent in the school or schools within its jurisdiction. The Governing Board must make these spending determinations in an open session of a public meeting. The language in the Constitutional Amendment requires that funds shall not be used for the salaries and benefits of administrators or any other administrative costs.

**RECOMMENDATION**

It is recommended that the Board of Trustees adopt **RESOLUTION 2013-27** approving the expenditure of Education Protection Account funds to be received from the State in June 2013 and authorize the Superintendent or his designee to sign all documents.

FOUNTAIN VALLEY SCHOOL DISTRICT

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
FOUNTAIN VALLEY SCHOOL DISTRICT**

**RESOLUTION 2013-27  
EDUCATION PROTECTION ACCOUNT**

WHEREAS, the voters approved Proposition 30 on November 6, 2012;

WHEREAS, Proposition 30 added Article XIII, Section 36 to the California Constitution effective November 7, 2012;

WHEREAS, the provisions of Article XIII, Section 36(e) create in the State General Fund an Education Protection Account to receive and disburse the revenues derived from the incremental increases in taxes imposed by Article XIII, Section 36(f);

WHEREAS, before June 30<sup>th</sup> of each year, the Director of Finance shall estimate the total amount of additional revenues, less refunds that will be derived from the incremental increases in tax rates made pursuant to Article XIII, Section 36(f) that will be available for transfer into the Education Protection Account during the next fiscal year;

WHEREAS, if the sum determined by the State Controller is positive, the State Controller shall transfer the amount calculated into the Education Protection Account within ten days preceding the end of the fiscal year;

WHEREAS, all monies in the Education Protection Account are hereby continuously appropriated for the support of school districts, county offices of education, charter schools and community college districts;

WHEREAS, monies deposited in the Education Protection Account shall not be used to pay any costs incurred by the Legislature, the Governor or any agency of State government;

WHEREAS, a community college district, county office of education, school district or charter school shall have the sole authority to determine how the monies received from the Education Protection Account are spent in the school or schools within its jurisdiction;

WHEREAS, the Governing Board of the District shall make the spending determinations with respect to monies received from the Education Protection Account in open session of a public meeting of the Governing Board;

WHEREAS, the monies received from the Education Protection Account shall not be used for salaries or benefits for administrators or any other administrative cost;

WHEREAS, each community college district, county office of education, school district and charter school shall annually publish on its Internet website an accounting of how much money was received from the Education Protection Account and how that money was spent;

WHEREAS, the annual independent financial and compliance audit required of community college districts, county offices of education, school districts and charter schools shall ascertain and verify whether the funds provided from the Education Protection Account have been properly disbursed and expended as required by Article XIII, Section 36 of the California Constitution;

WHEREAS, expenses incurred by community college districts, county offices of education, school districts and charter schools comply with the additional audit requirements of Article XIII, Section 36 may be paid with funding from the Education

Protection Act and shall not be considered administrative costs for purposes of Article XIII, Section 36.

**NOW, THEREFORE, IT IS HEREBY RESOLVED:**

1. The monies received from the Education Protection Account shall be spent as required by Article XIII, Section 36 and the spending determinations shall be made in open session of a public meeting of the Governing Board of the Fountain Valley School District;

2. In compliance with Article XIII, Section 36(e), with the California Constitution, the Governing Board of the Fountain Valley School District has determined to spend the monies received from the Education Protection Act as attached.

DATED: June 13, 2013.

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Sandra Crandall, President

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Jimmy Templin, President Pro-Tem

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Judith Edwards, Clerk

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Ian Collins, Member

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Jeanne Galindo, Member

2012-13 Education Protection Account  
Program by Resource Report  
Expenditures by Function - Detail

FOUNTAIN VALLEY ELEMENTARY SCHOOL DISTRICT  
**Expenditures through: June 30, 2013**  
**For Fund 01, Resource 1400 Education Protection Account**

Description	Object Codes	Amount
<b>AMOUNT AVAILABLE FOR THIS FISCAL YEAR</b>		
Adjusted Beginning Fund Balance	9791-9795	0.00
Revenue Limit Sources	8010-8099	6,106,815.00
Federal Revenue	8100-8299	0.00
Other State Revenue	8300-8599	0.00
Other Local Revenue	8600-8799	0.00
All Other Financing Sources and Contributions	8900-8999	0.00
Deferred Revenue	9650	0.00
<b>TOTAL AVAILABLE</b>		<b>6,106,815.00</b>
<b>EXPENDITURES AND OTHER FINANCING USES</b>		
<b>(Objects 1000-7999)</b>		
Instruction	1000-1999	6,106,815.00
Instruction-Related Services		
Instructional Supervision and Administration	2100-2150	0.00
AU of a Multidistrict SELPA	2200	0.00
Instructional Library, Media, and Technology	2420	0.00
Other Instructional Resources	2490-2495	0.00
School Administration	2700	0.00
Pupil Services		
Guidance and Counseling Services	3110	0.00
Psychological Services	3120	0.00
Attendance and Social Work Services	3130	0.00
Health Services	3140	0.00
Speech Pathology and Audiology Services	3150	0.00
Pupil Testing Services	3160	0.00
Pupil Transportation	3600	0.00
Food Services	3700	0.00
Other Pupil Services	3900	0.00
Ancillary Services	4000-4999	0.00
Community Services	5000-5999	0.00
Enterprise	6000-6999	0.00
General Administration	7000-7999	0.00
Plant Services	8000-8999	0.00
Other Outgo	9000-9999	0.00
<b>TOTAL EXPENDITURES AND OTHER FINANCING USES</b>		<b>6,106,815.00</b>
<b>BALANCE (Total Available minus Total Expenditures and Other Financing Uses)</b>		<b>0.00</b>