

terminate the legal existence of Contractor, at or before the latest of the following:

- 10.7.1. Eighteen (18) months following Project Completion, or
- 10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project.

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

11. Preliminary Services

11.1. The terms and conditions pertaining to the performance of preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit H** to this Facilities Lease. To the extent any terms and conditions set forth therein conflict with terms and conditions in the body of the Facilities Lease, the terms and conditions contained in **Exhibit H** shall control regarding the performance of preliminary services.

11.2. The payment provisions for preliminary services, if any, under this Facilities Lease, are set forth in **Exhibit C** to this Facilities Lease.

12. Construction of Project

- 12.1.1. **Construction of Project.** The Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the General Construction Provisions set forth in **Exhibit D** and the Special Construction Provisions set forth in **Exhibit K**, including those things reasonably inferable in the General Construction Provisions and Special Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Contract Documents.
- 12.1.2. **Contract Time.** The Work shall be commenced on the date stated in the District's Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract.
- 12.1.3. **Liquidated Damages:** Time is of the essence for all work Contractor must perform to obtain Project Completion. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve a Milestone as set forth in the Special Construction Provisions (**Exhibit K**), the Contractor shall be subject to Liquidated Damages in accordance with the Contract.
- 12.1.4. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.
- 12.1.5. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be adjusted as a Change pursuant to the provisions of **Exhibit D**.
- 12.1.6. **State Funding.** Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.

12.1.7. Compliance Monitoring and Enforcement by the Department of Industrial Relations.

12.1.7.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

12.1.7.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Agreement. Contractor represents to the District that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

12.1.7.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

13. Maintenance. Following delivery of possession of the entirety of the Project by Contractor to District, the repair, improvement, replacement and maintenance of the Project and the Project Site shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Master Facilities Lease.

14. Utilities. Following delivery of possession of the entirety of the Project by Contractor to District, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District.

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Master Facilities Lease or the Master Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

16. Insurance

16.1. Contractor’s Insurance. The Contractor shall comply with the insurance requirements as set forth in

the General Construction Provisions (**Exhibit D**) and the Special Construction Provisions (**Exhibit K**).

17. Indemnification.

17.1. Contractor's Indemnity Obligations. The Contractor's indemnity obligations are set forth in the General Construction Provisions (**Exhibit D**).

17.2. District's Indemnity Obligations.

17.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Master Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Master Facilities Lease;

17.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

17.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

17.2.2. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Master Site Lease and/or the Master Facilities Lease.

18. Eminent Domain.

18.1. Total Taking After Project Delivery. If, following delivery of possession of the entirety of the Project by Contractor to District, all of the Project and the Project Site is taken permanently under the power of eminent domain, the Term shall cease as of the day possession shall be so taken.

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** for the remainder of the original Term.

18.1.2. The balance of the award, if any, shall be paid to the District.

18.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site is taken permanently under the power of eminent domain and the Contractor is still performing the Work of the Project and has not yet delivered possession of the entirety of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the reasonable value of Work Contractor has performed on the Project, including overhead and profit for such Work performed and in place, subject to documentation reasonably satisfactory to the District.

18.3. Partial Taking. If, following delivery of possession of the entirety of the Project by Contractor to District, less than all of the Project and the Project Site is taken permanently, or if all of the Project and the Project Site or any part thereof is taken temporarily, under the power of eminent domain:

18.3.1. This Master Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

- 18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable division of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C**.

19. Damage and Destruction. If, following delivery of possession of the entirety of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions set forth in **Exhibit C** for the remainder of the original Term. The Contractor shall be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

20. Abatement.

20.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Contractor have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Master Facilities Lease. The Term shall cease at that time.

20.2. The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

20.3. The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

20.3.1. Repair the Project to full use;

20.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Master Facilities Lease by appropriate endorsement; or

20.4. The District shall notify the Contractor of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

21. Access

21.1. By Contractor. Contractor shall have the right at all reasonable times to enter upon the Project Site to construct the Project pursuant to this Master Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

21.2. By District. The District shall have the right to enter upon the Project Site at all times. District shall comply with all safety precautions and procedures required by Contractor.

22. Assignment, Subleasing

22.1. Assignment and Subleasing by the District. Any assignment or sublease by District shall be subject to all of the following conditions:

- 22.1.1. This Master Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and
- 22.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease.

22.2. Assignment by Contractor. Contractor may assign its right, title and interest in this Master Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Master Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are no additional costs to the District.

23. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

23.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

23.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

If to District: Alameda Unified School District 2060 Challenger Avenue Alameda CA 94501 510-337-7911 Attention: Robbie Lyng, Director Maintenance, Facilities & Operations	If to Contractor: Alten Construction, Inc. 1141 Marina Way, S Richmond, CA 94804 ATTN: Robert Alten, President
With a copy to: Orbach Huff Suarez & Henderson LLP 1901 Harrison Street, Ste.1630 Oakland, CA 94611 Attention: Glenn Gould, Esq.	With a copy to: McNeil Silveira Rice & Wiley 55 Professional Center Parkway, Suite A San Rafael, CA 94903 Attention: Mark J. Rice

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

24. Binding Effect. This Master Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.

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

26. Severability. In the event any provision of this Master Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Master Facilities Lease or the Master Site Lease.

27. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein and to the provisions of **Exhibit D** General Construction Provisions and **Exhibit K** Special Construction Provisions, this Master Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

28. Net-Net-Net Lease. This Master Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

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

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

31. Applicable Law. This Master Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the Project is located.

32. No Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Master Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys’ fees.

33. Captions. The captions or headings in this Master Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Master Facilities Lease.

34. Prior Agreements. This Master Facilities Lease and the corresponding Master Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Master Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

35. Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Master Facilities Lease.

36. Recitals Incorporated. The Recitals set forth at the beginning of this Master Facilities Lease are hereby incorporated into its terms and provisions by this reference.

37. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Master Facilities Lease.

38. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Master Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Master Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the

Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Master Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: 11/18/2018, 2018

Alameda Unified School District

By: 

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

Dated: Nov. 19, 2018

Alten Construction, Inc.

By: 

Print Name: Robert Alten

Print Title: President

By: _____

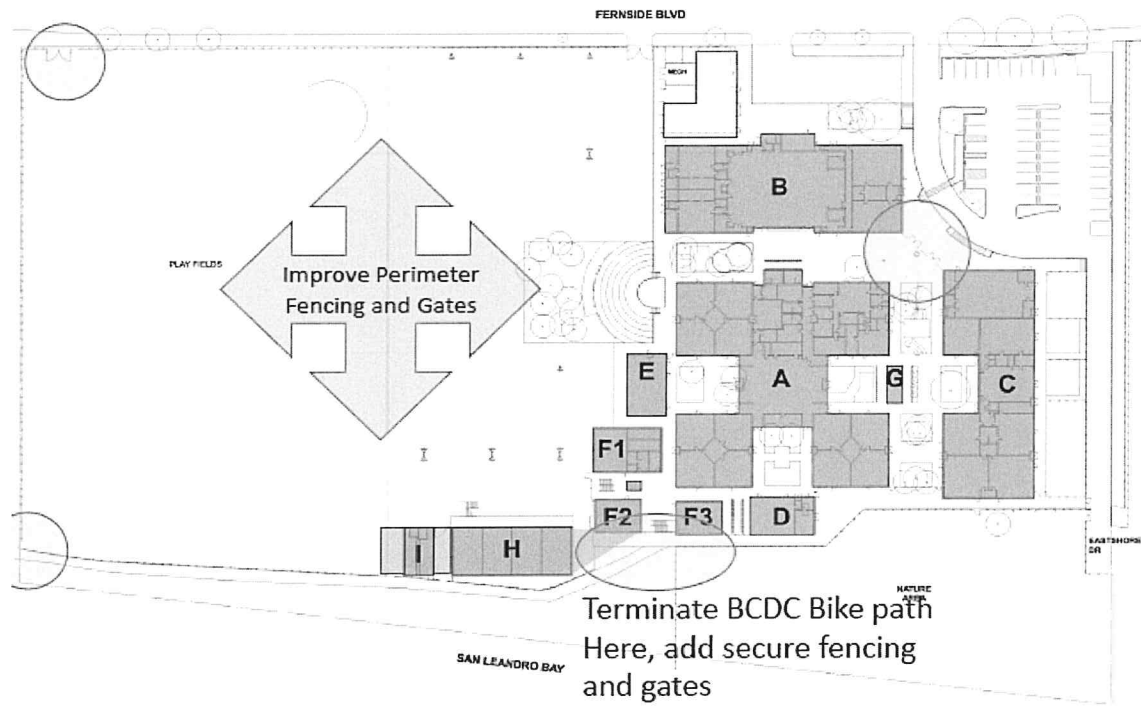
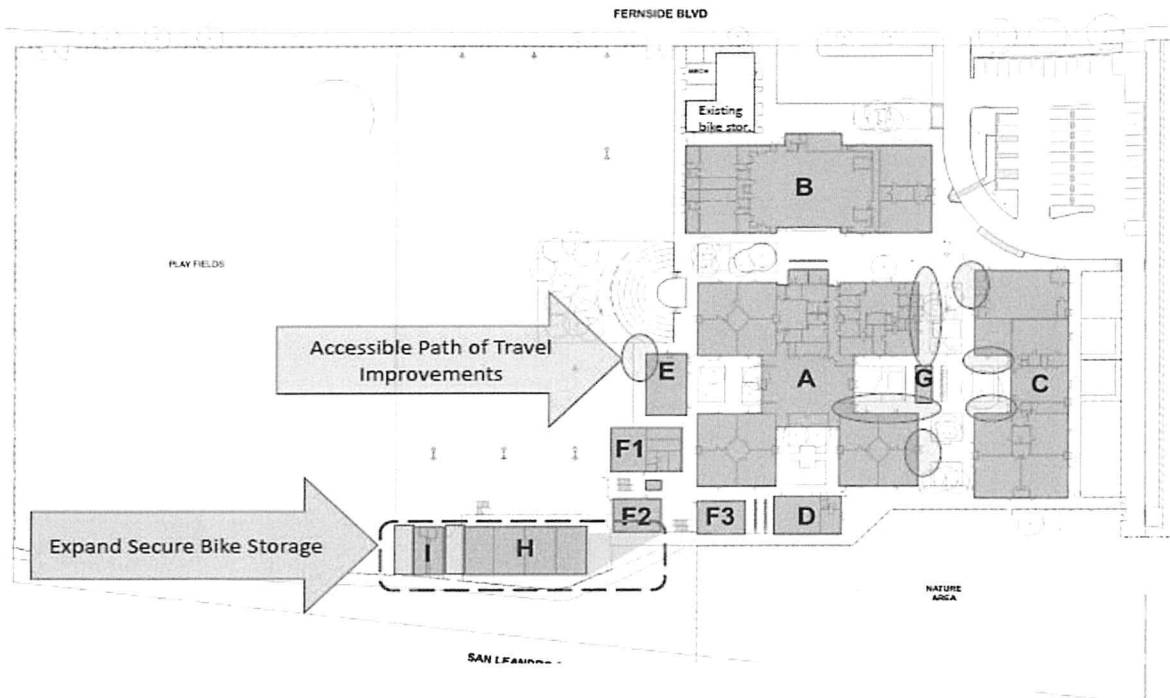
Print Name: Shariq Khan

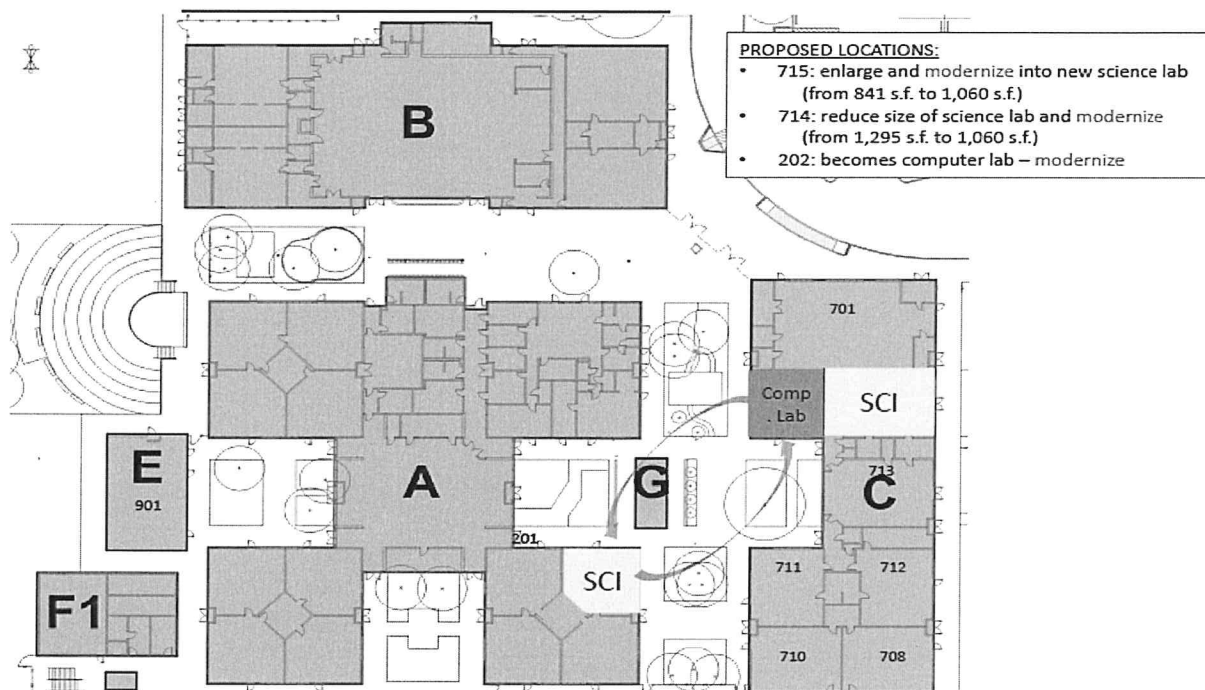
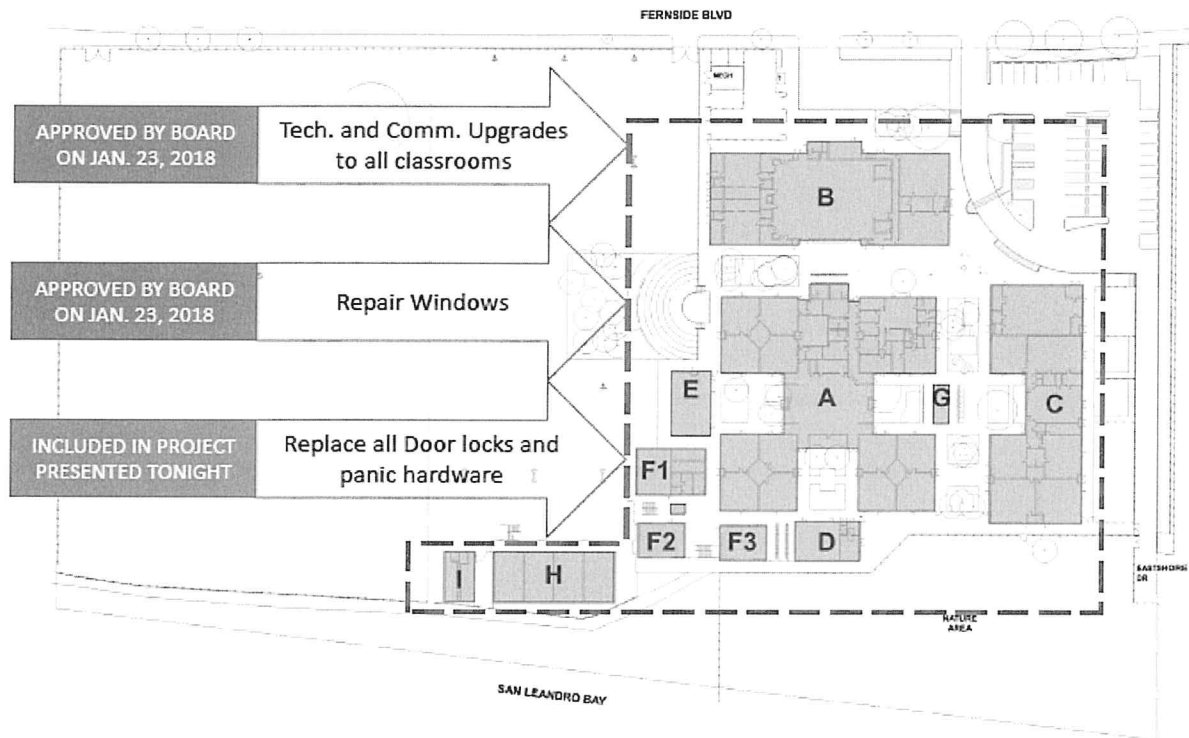
Print Title: Chief Business Officer

EXHIBIT A
TO
MASTER FACILITIES LEASE

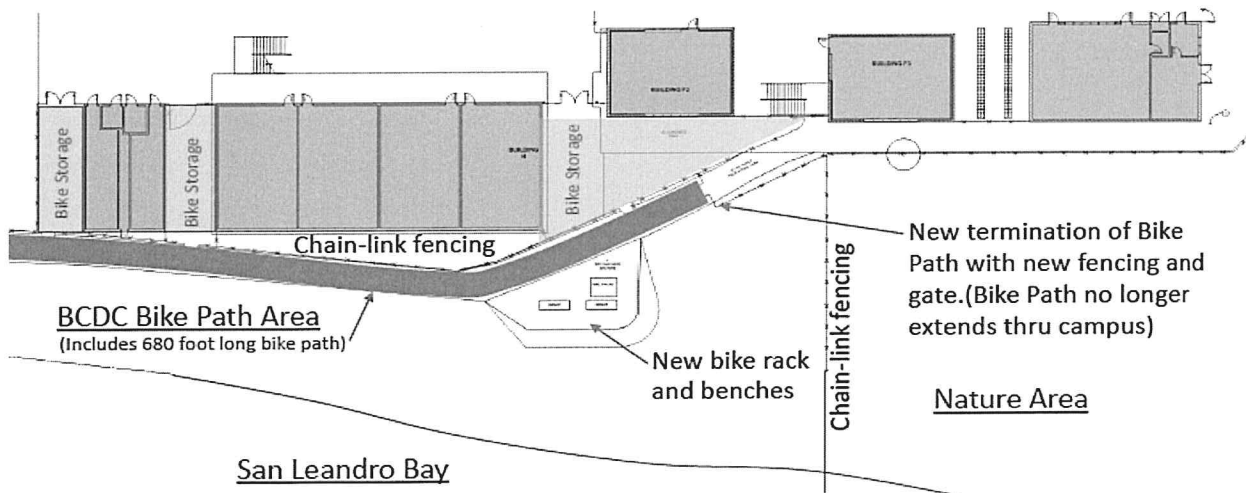
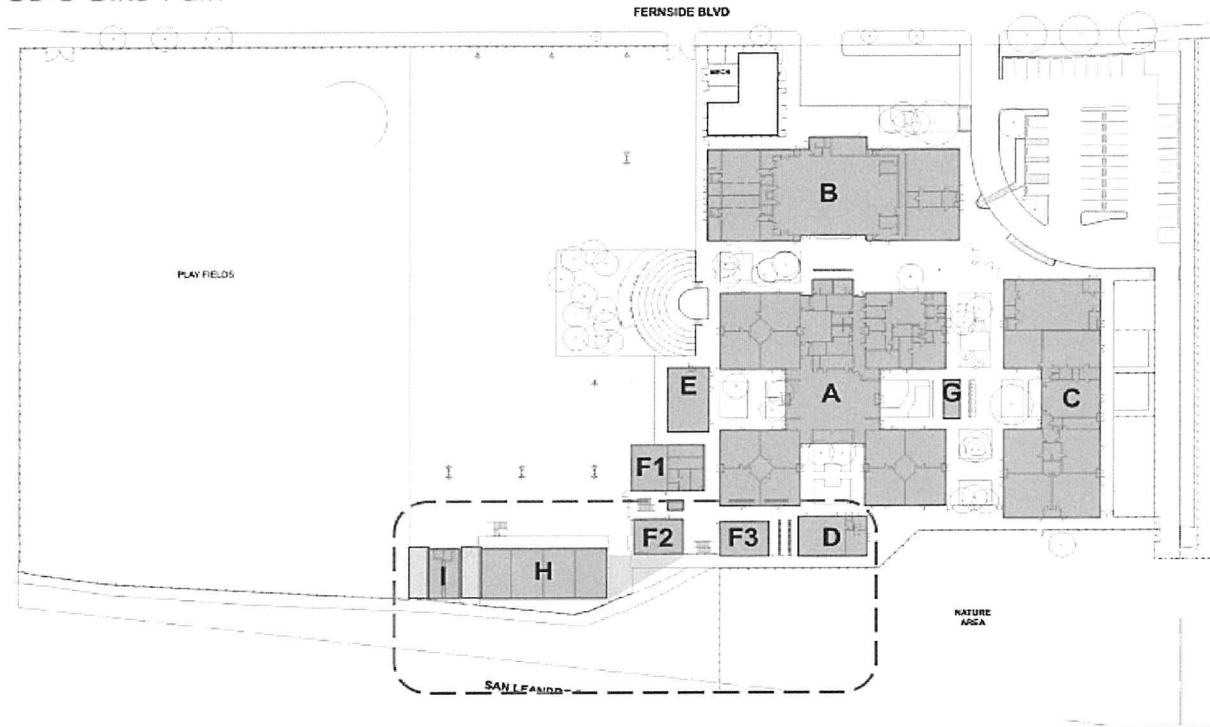
SCHOOL SITE



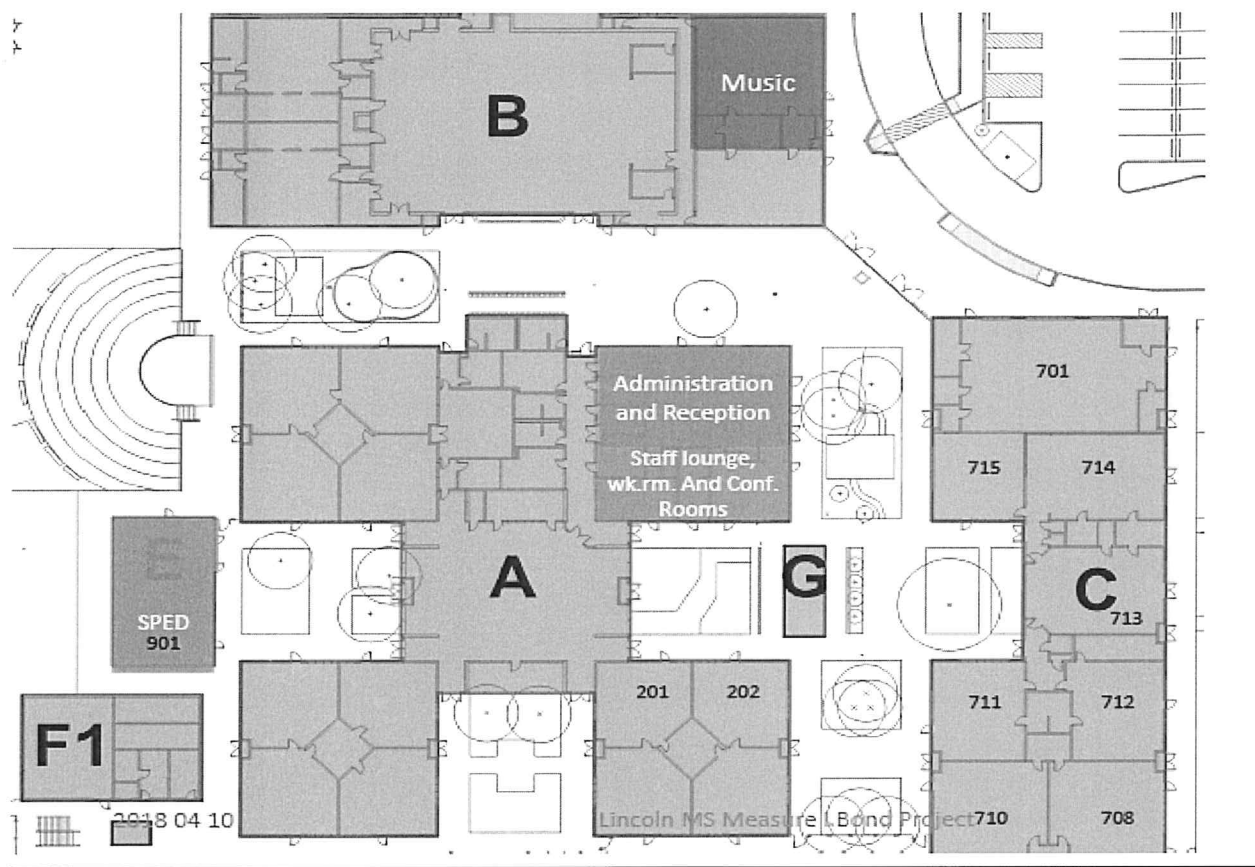




BCDC Bike Path



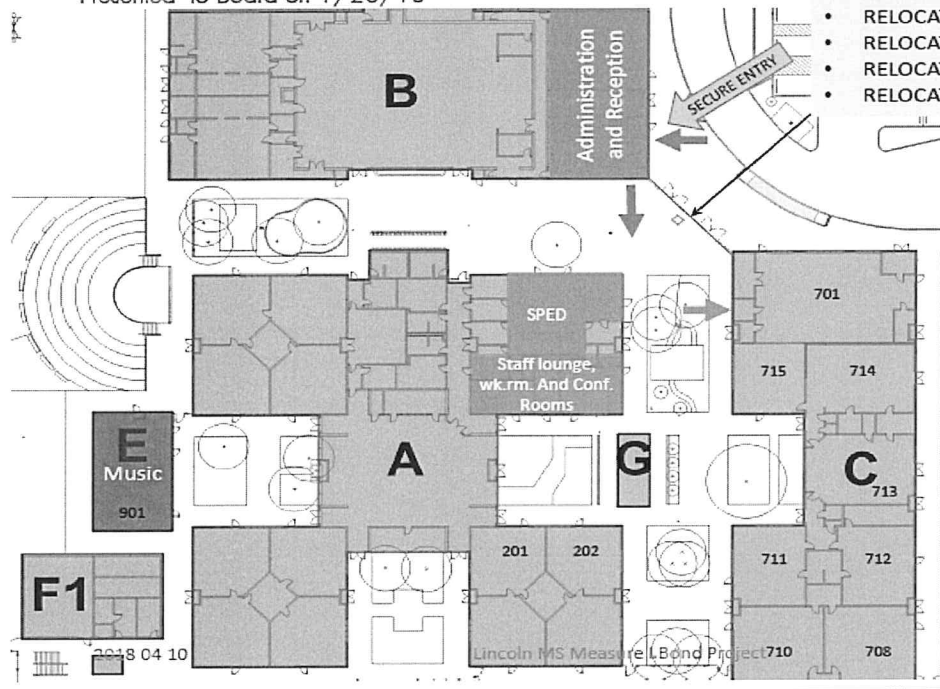
Existing locations



Option 4 – Relocate Reception and Administration

- Approved by committee after Site Committee #6 on 6/6/17
- Presented to Board on 1/23/18

- NEW ORNAMENTAL ENTRY FENCING AND GATES
- RELOCATE ADMIN. AND RECEPTION
- RELOCATE MUSIC CLASSROOM
- RELOCATE SPECIAL ED. CLASSROOM
- RELOCATE CLASSROOM 701 ENTRY

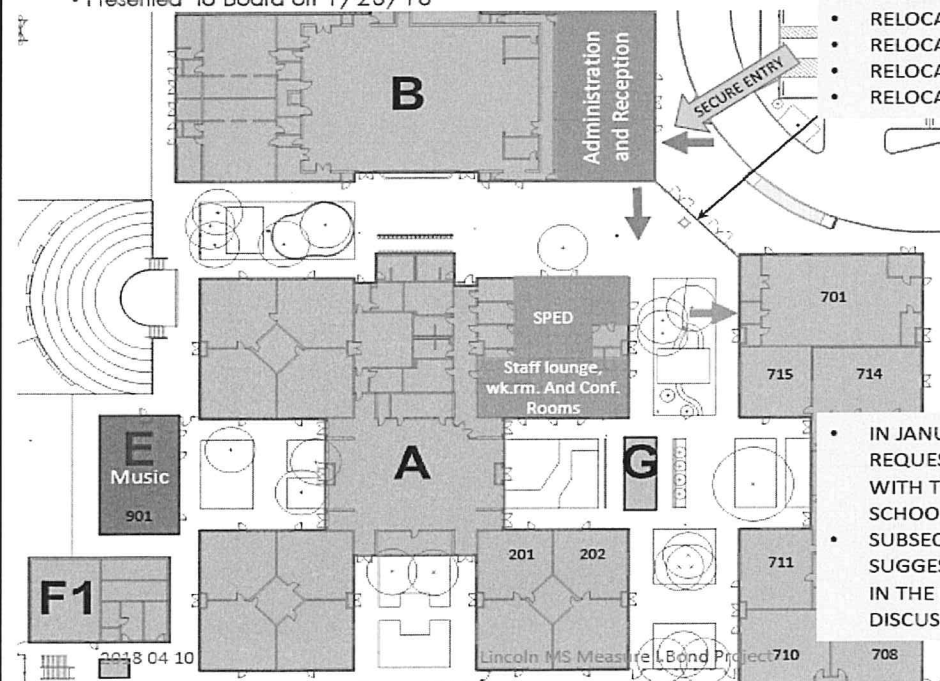


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Option 4 – Relocate Reception and Administration

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- Presented to Board on 1/23/18

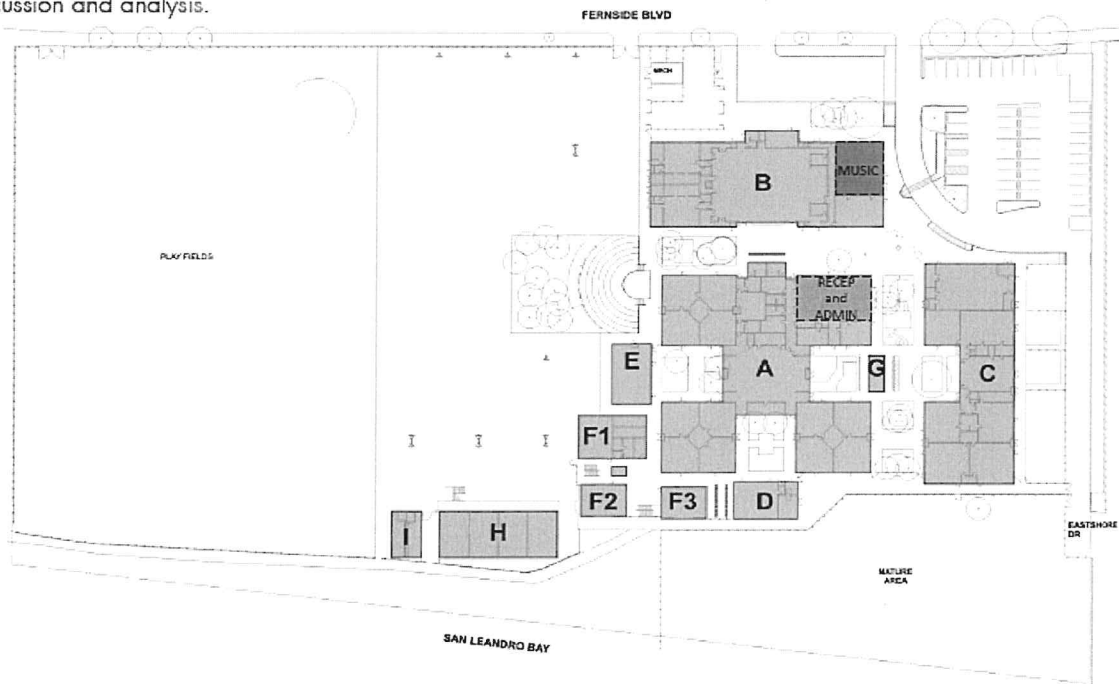
- NEW ORNAMENTAL ENTRY FENCING AND GATES
- RELOCATE ADMIN. AND RECEPTION
- RELOCATE MUSIC CLASSROOM
- RELOCATE SPECIAL ED. CLASSROOM
- RELOCATE CLASSROOM 701 ENTRY



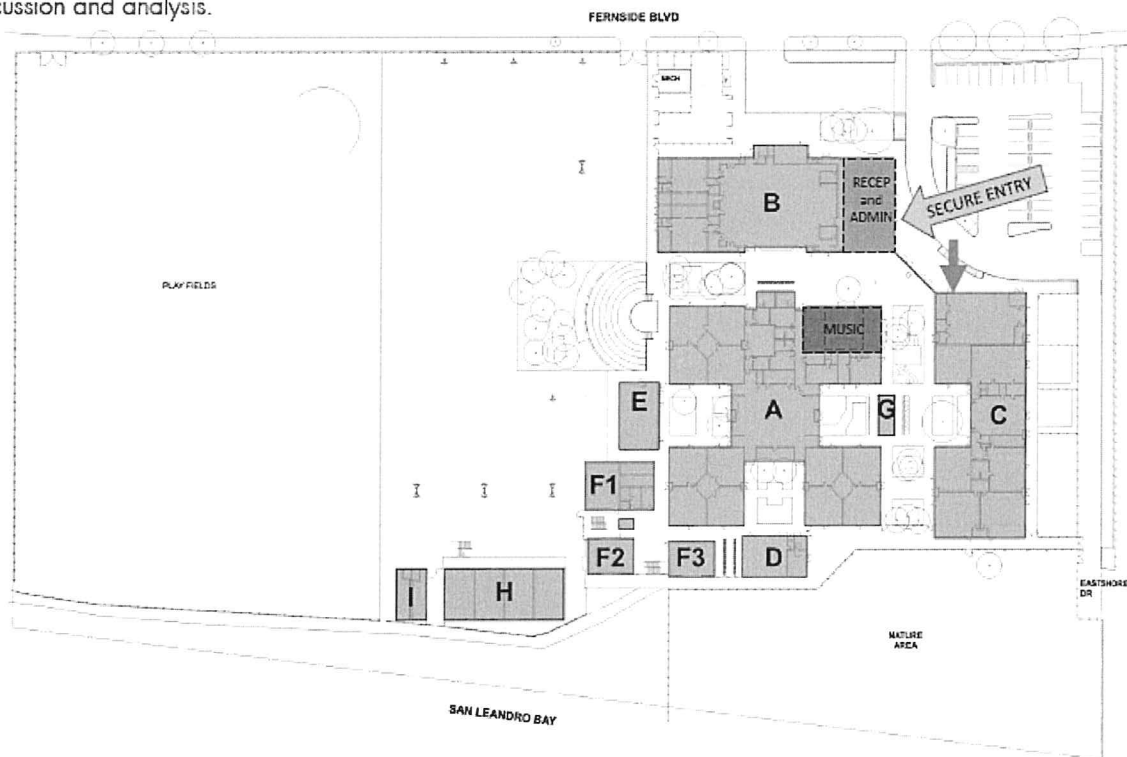
- IN JANUARY THE BOARD REQUESTED FURTHER DISCUSSION WITH THE LINCOLN MIDDLE SCHOOL COMMUNITY
- SUBSEQUENT OPTIONS HAVE BEEN SUGGESTED AND ARE PRESENTED IN THE FOLLOWING SLIDES FOR DISCUSSION PURPOSES

17

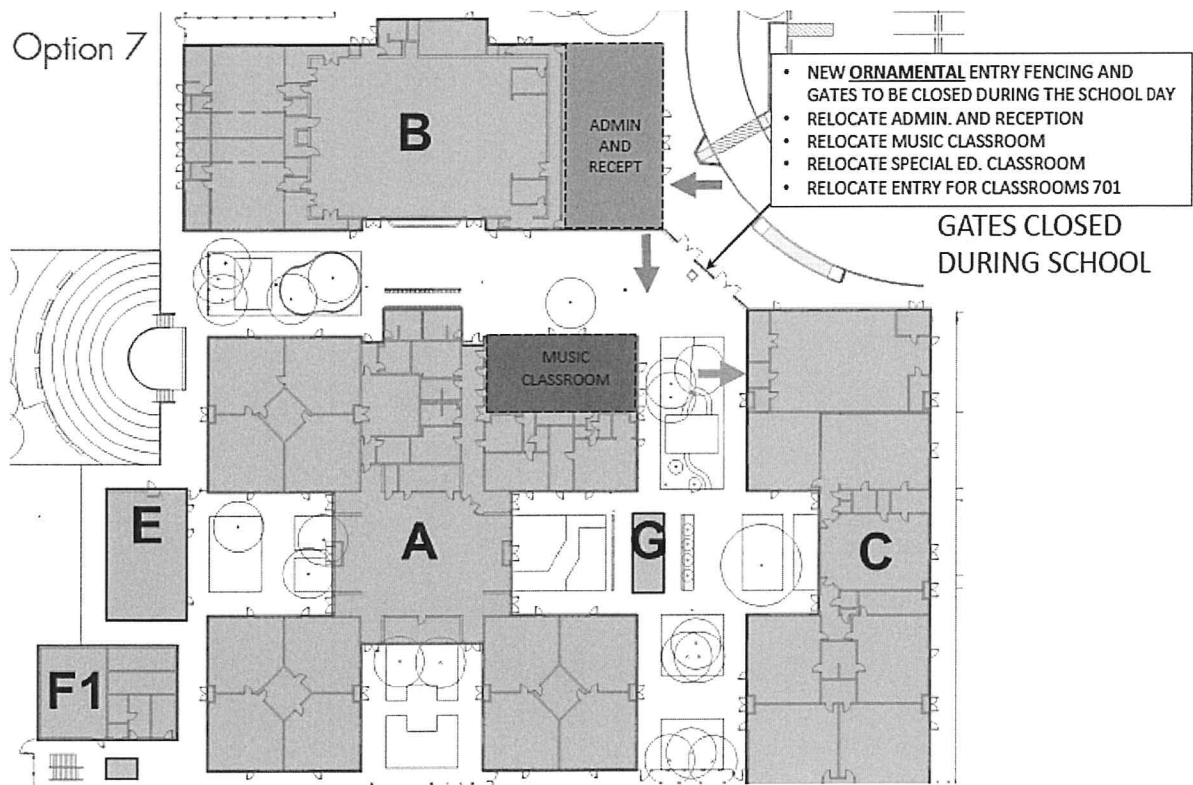
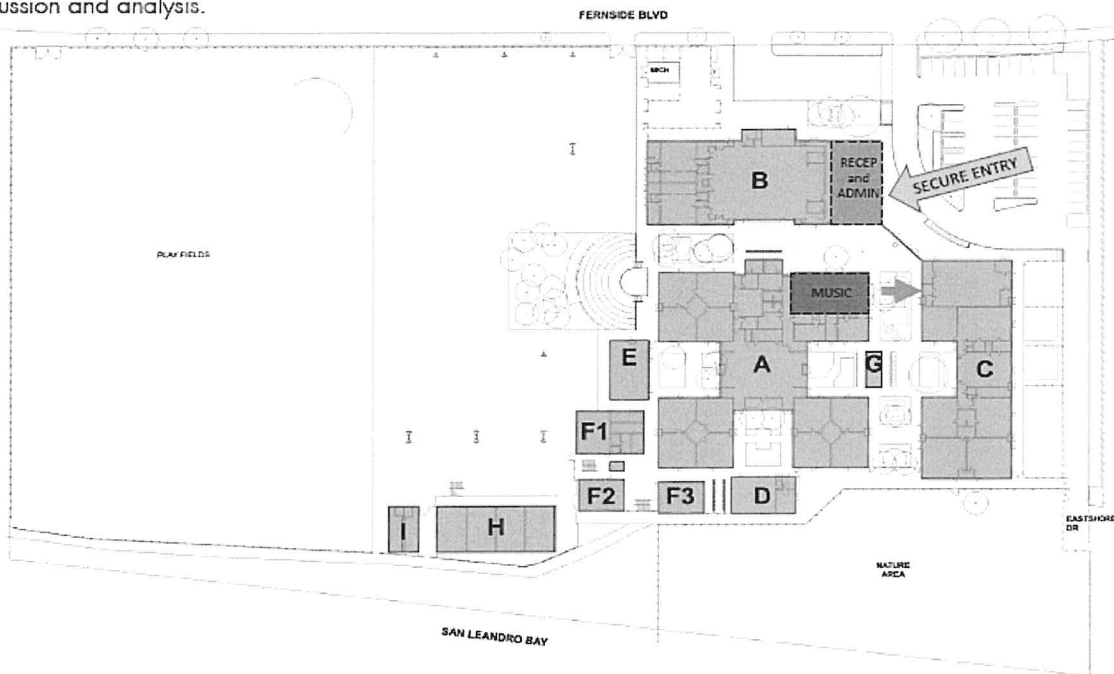
Option 7 – Move Administration and Reception to Building B and move the Music Classroom to building A.
As proposed by Site Committee member via email on March 5, 2018. QKA was directed to develop for further discussion and analysis.



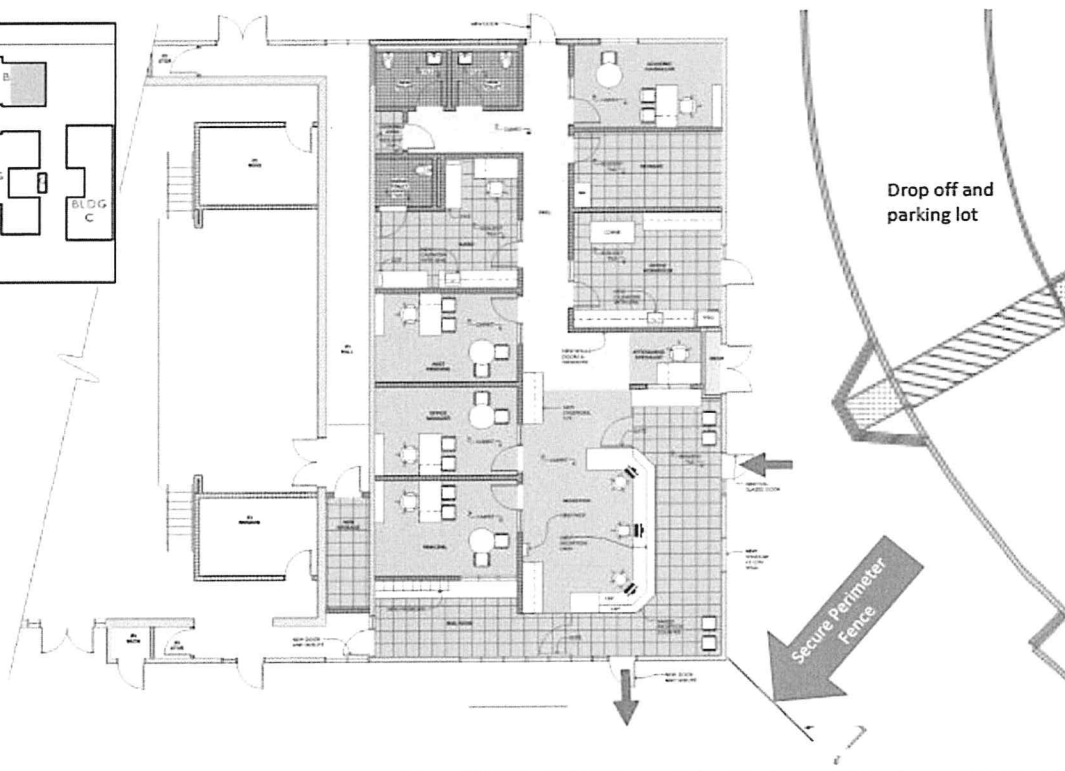
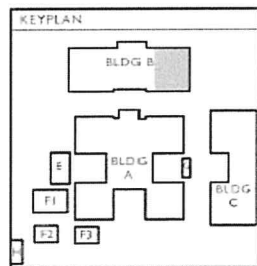
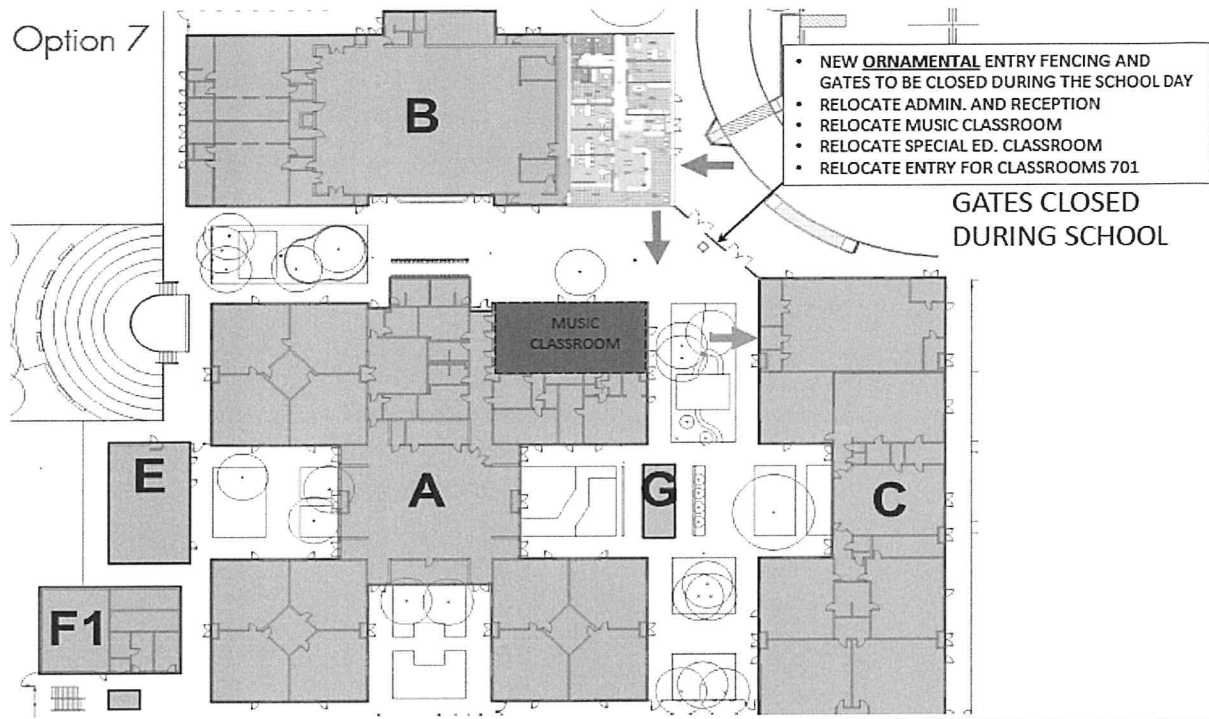
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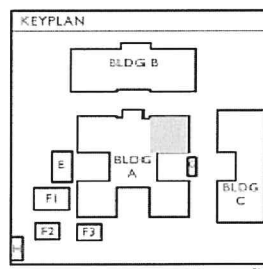
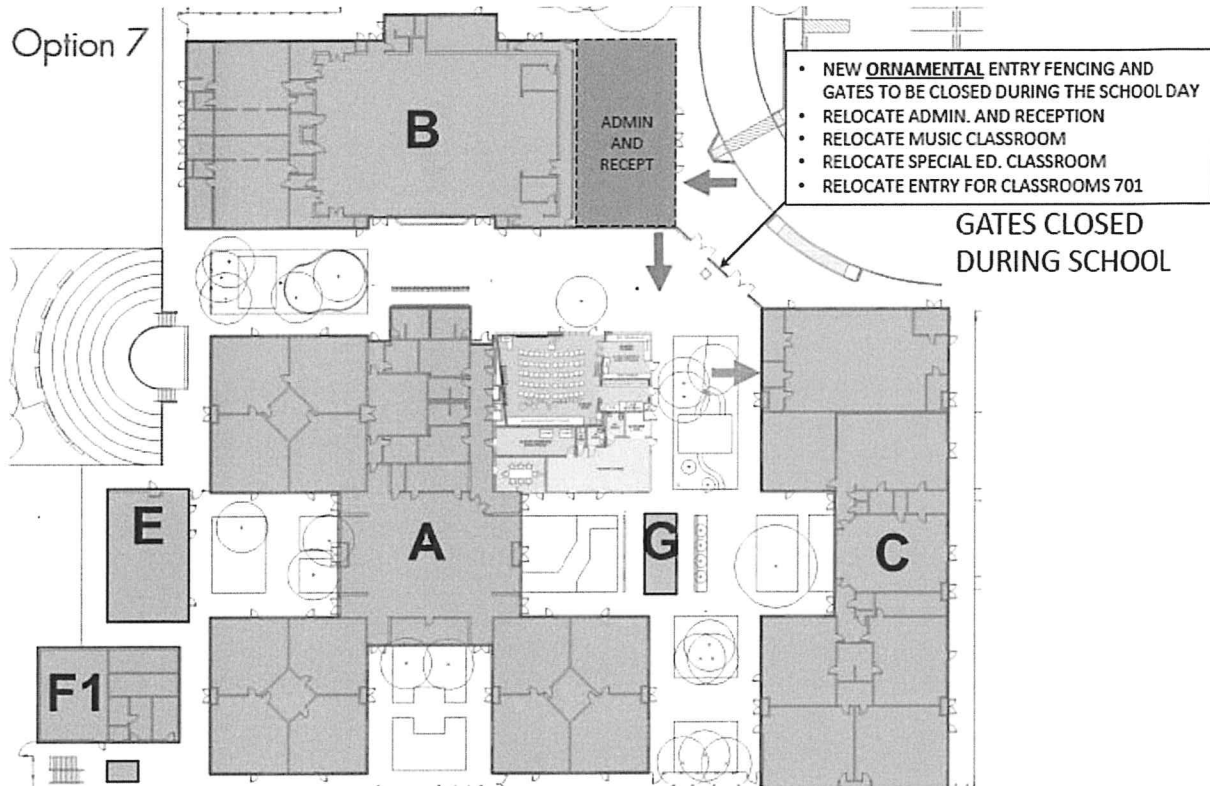
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Option 7

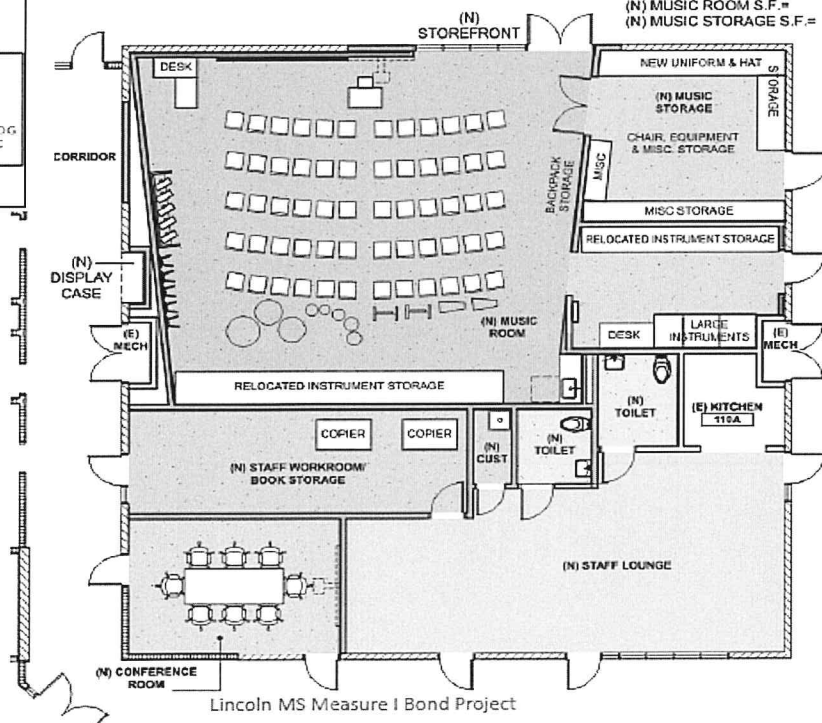


Option 7



OCCUPANT LOAD FACTOR
PER SECTION 10 TABLE 1004.1.2
IS 78 PERSONS

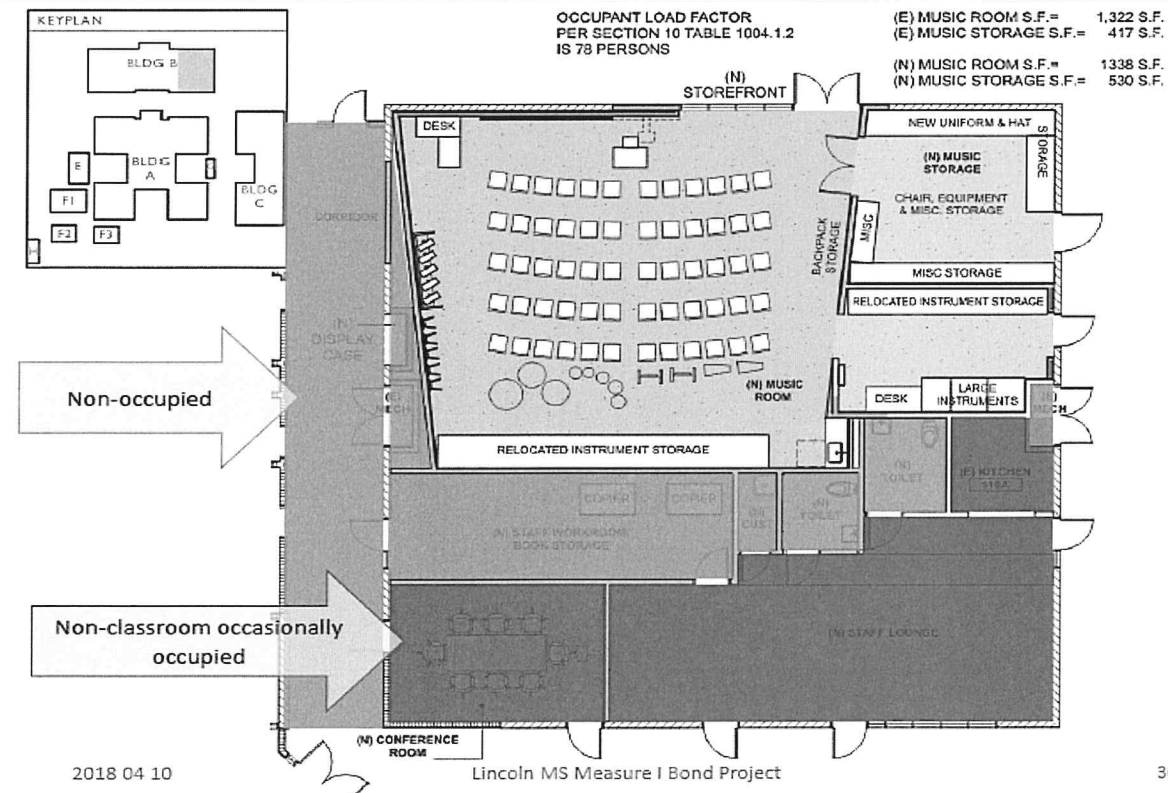
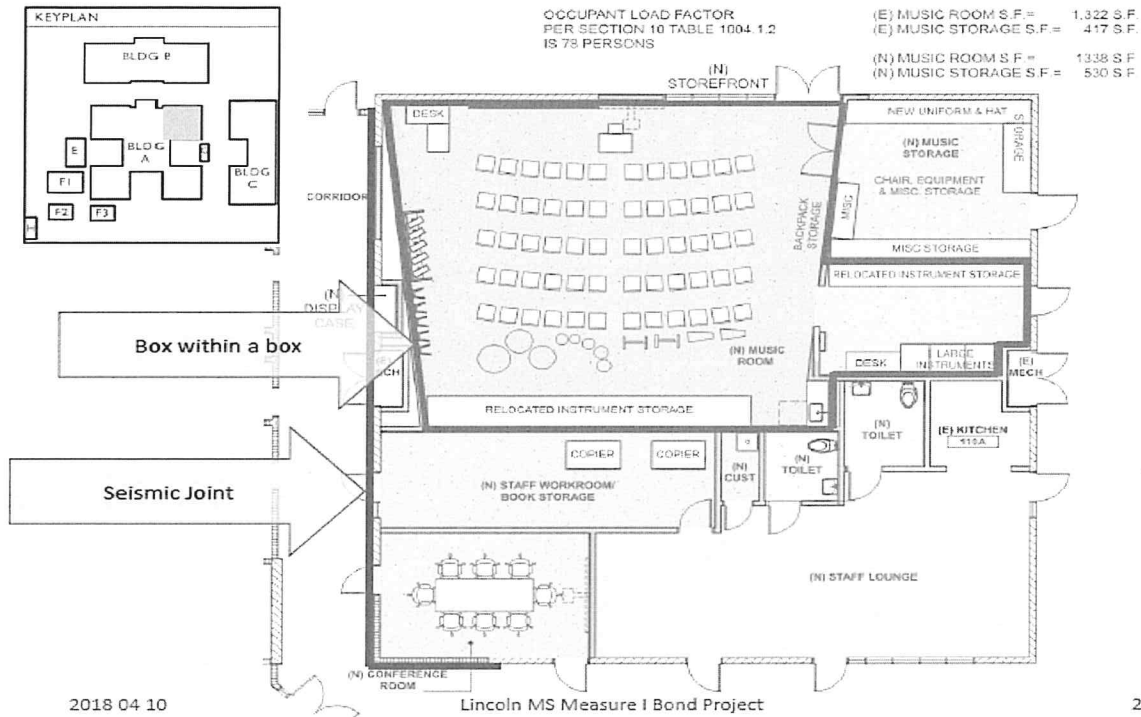
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(E) MUSIC STORAGE S.F.= 417 S.F.
(N) MUSIC ROOM S.F.= 1338 S.F.
(N) MUSIC STORAGE S.F.= 530 S.F.



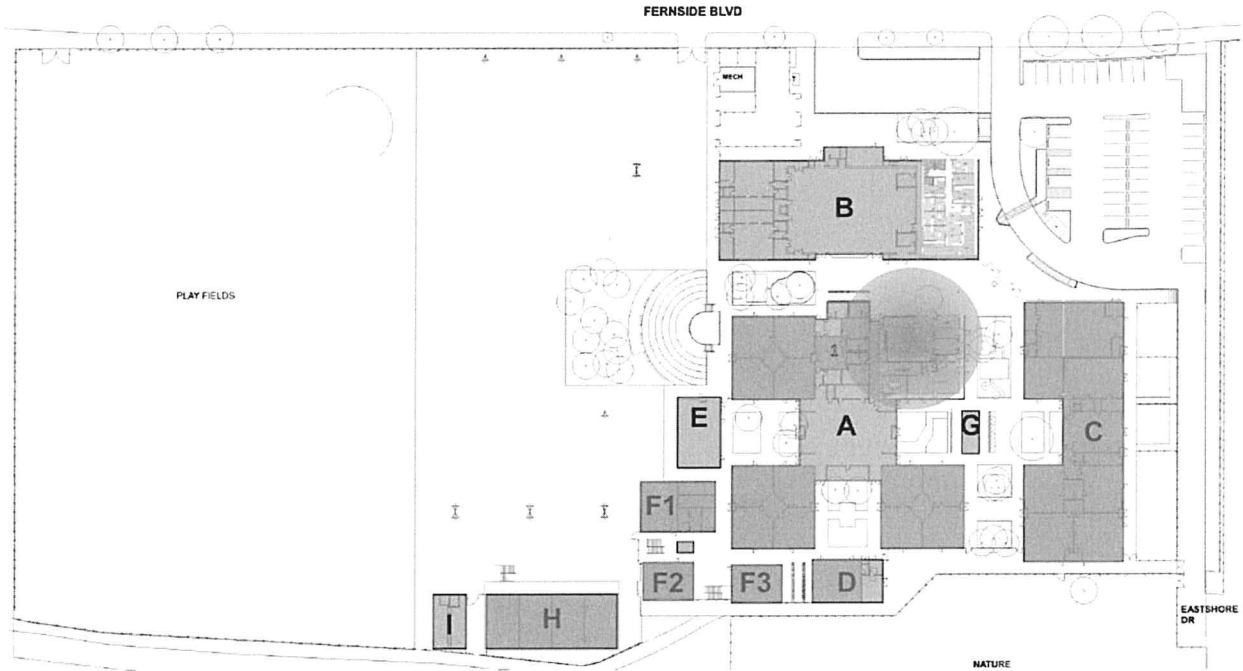
2018 04 10

Lincoln MS Measure I Bond Project

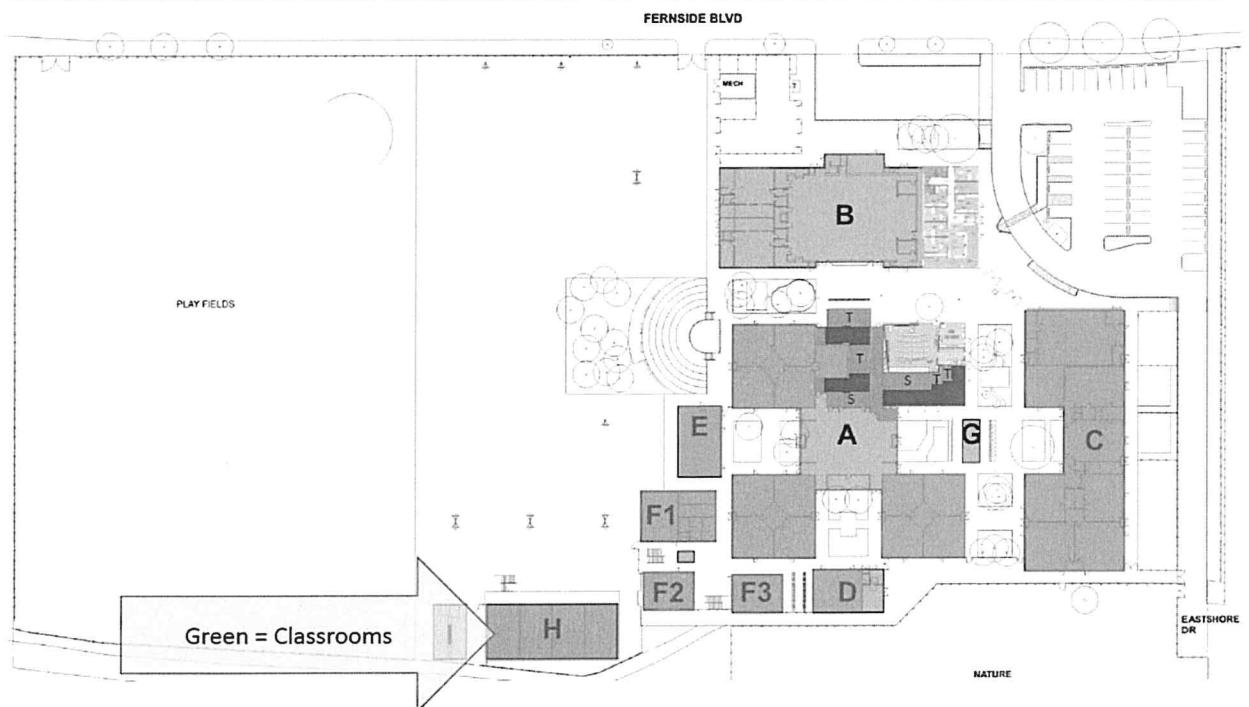
27



Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation



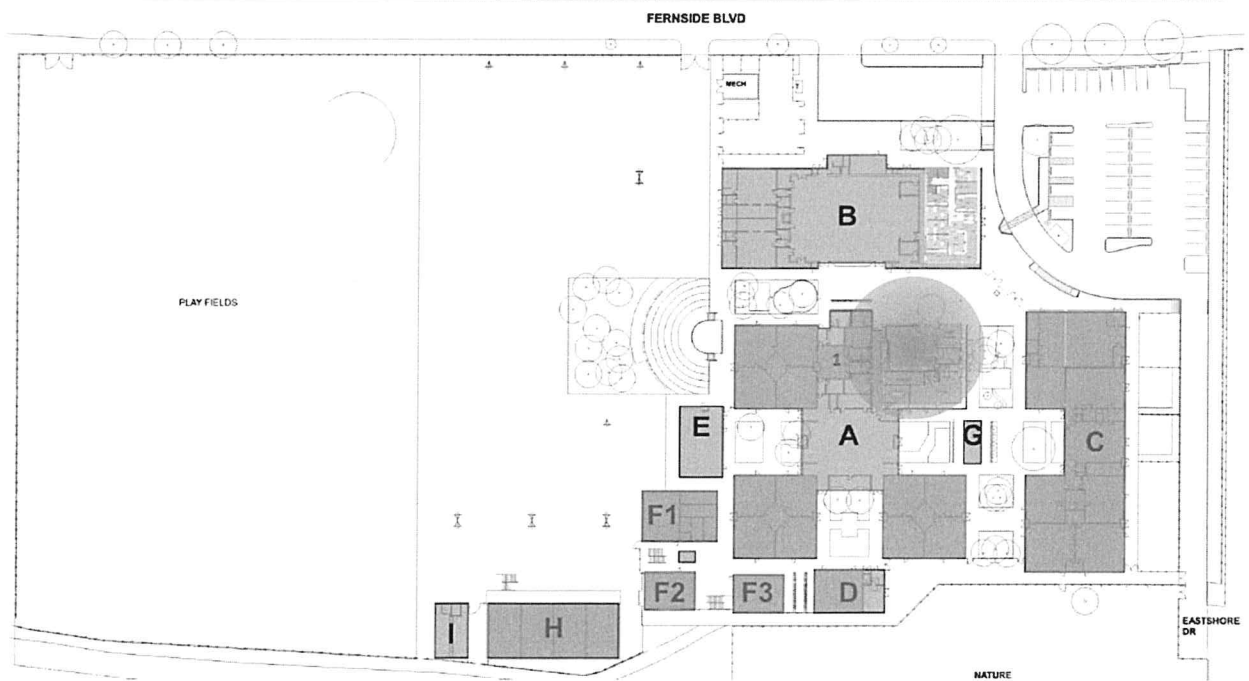
Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation



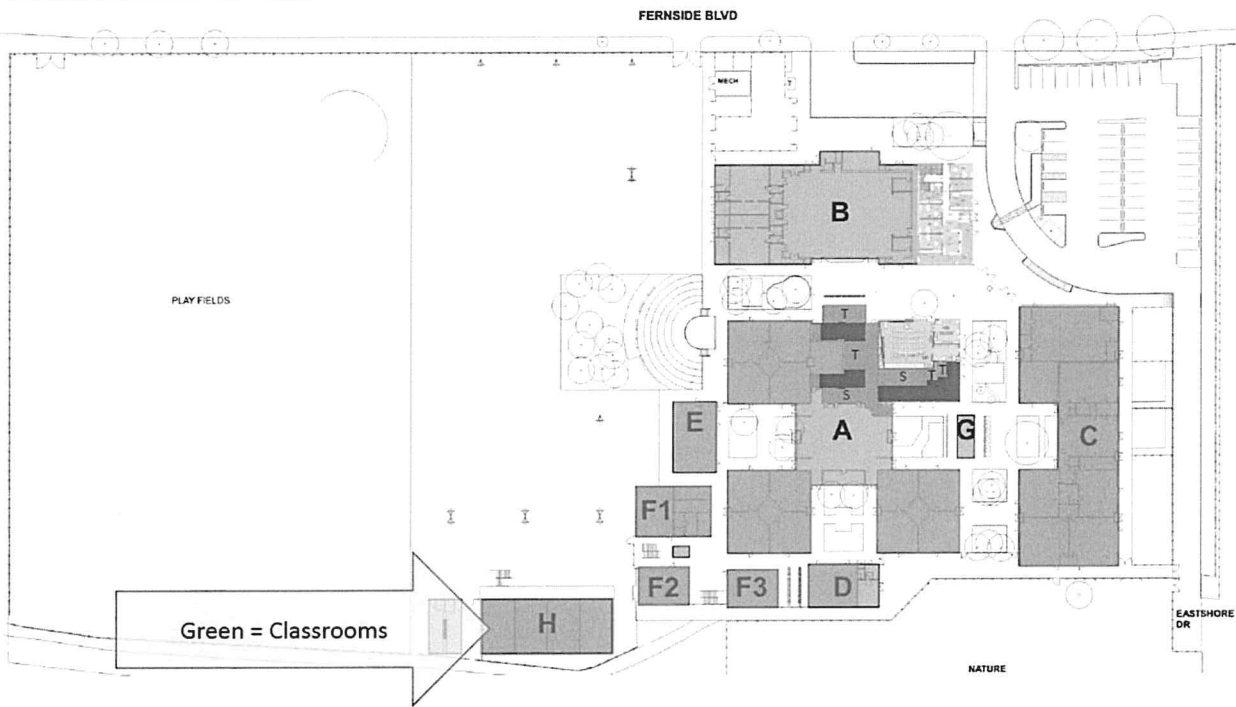
Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation
As compared to Building E



Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation



Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation



Entry Security Option #7 – New Music at Bldg. A – Acoustic Isolation

As compared to Building E



**EXHIBIT B
TO
MASTER FACILITIES LEASE

DESCRIPTION OF PROJECT SITE
AND
DESCRIPTION OF THE PROJECT AT SCHOOL SITE**

PROJECT SITE DESCRIPTION:

Attached is a site diagram for the portions of the Lincoln Middle School Site that is subject to the Master Site Lease and the Master Facilities Lease and upon which Contractor will construct the Project.

PROJECT DESCRIPTION:

THIS PROJECT INCLUDES THE FOLLOWING SCOPE OF WORK:

- SELECTIVE DEMOLITION, HAZARDOUS MATERIAL ABATEMENT AND CONSTRUCTION NECESSARY FOR THE SEISMIC REHABILITATION AND MODERNIZATION OF EXISTING SCHOOL BUILDING, INCLUDING ASSOCIATED CIVIL LANDSCAPE, ARCHITECTURAL, STRUCTURAL, PLUMBING, MECHANICAL AND/OR ELECTRICAL WORK AS INDICATED IN THE DRAWINGS AND SPECIFICATIONS.
- GENERALLY THESE CATERGORIES OF WORK INVOLVE STRUCTURAL IMPROVEMENTS, NEW FRAMING AND FINISHES, ACCESSIBILITY IMPROVEMENTS, NEW MECHANICAL ELECTRICAL AND PLUMBING SYSTEM, NEW FIRE SPRINKLER AND FIRE ALARM SYSTEMS.
- THE PROJECT WILL INVOLVE CONSTRUCTION PHASING AND BARRICADING OF WORK AREAS AS REQUIRED TO SEPARATE CONSTRUCTION AREAS FROM OCCUPIED SPACES AND AS NEEDED TO ACCOMMODATE THE OWNER'S SCHEDULE AND USE OF THE SITE.

At the time of execution of the Master Site Lease and the Master Facilities Lease, the District is only authorizing the Contractor to perform Preliminary Services. The Parties intend at a later date to amend the Master Site Lease and the Master Facilities Lease to authorize the subsequent phase(s).

**EXHIBIT C
TO
MASTER FACILITIES LEASE**

**GUARANTEED PROJECT COST AND
OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

1. Preliminary Services Payments

1.1. If Contractor performs Preliminary Services for the District for the Project(s), the District shall pay to Contractor Twenty Thousand Dollars (\$20,000) ("**Preliminary Services Payment(s)**"), based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Exhibit H** to the Facilities Lease and as indicated here:

<u>Job Title</u>	<u>Hourly Rate</u>
Project Manager	\$85
Constructability Reviewer	\$105
Estimator	\$85
Scheduler	\$150

1.2. The Preliminary Services Payment s include all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.

1.3. Each Preliminary Services Payment shall be paid within forth-five (45) days upon submittal to (and verification by) the District of a monthly billing statement showing completion of the billed-for tasks.

2. Site Lease Payments. As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease.

3. Guaranteed Project Cost (or Guaranteed Maximum Price) [TO BE DETERMINED]. Pursuant to the Master Facilities Lease, Contractor will cause the Project to be constructed for [Spell Out] Dollars (\$Numeric), ("**Guaranteed Project Cost**" or "**GPC**" or "**Guaranteed Maximum Price**" or "**GMP**"). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of the Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein:

3.1. Cost to Perform Work.

3.1.1. Subcontract Costs. Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

3.1.2. Contractor-Performed Work. Costs incurred by the Contractor for self-performed work.

3.2. General Conditions. The fixed amount to be paid be for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for general liability insurance), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees.

3.3. Fees. All fees, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project.

3.4. Allowances. [IDENTIFY SPECIFIC SCOPES AND AMOUNTS.]

3.5. Bonds and Insurance. Two Percent (2%)

3.6. Overhead and Profit. Four Point Five Percent (4.5%)

3.7. Contingency. [OPTIONAL. TERMS AND AMOUNT TO BE NEGOTIATED.] A Contingency of _____ Dollars (\$_____) is included in the Guaranteed Project Cost and may be used in the District's sole discretion. If the District chooses to utilize all or a portion of the Contingency, the District shall notify the Contractor in writing in accordance with **Exhibit D** to the Master Facilities Lease. The unused portion of the Contingency shall be retained by the District at the end of the Project.

4. Payment of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

4.1. Tenant Improvement Payments [TO BE DETERMINED]. Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric) ("Tenant Improvement Payments")**, based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments and pursuant to the provisions in **Exhibit D** to the Master Facilities Lease.

4.2. Lease Payments Plus Interest [TO BE DETERMINED]. After the Parties execute the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit E**, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric) ("Lease Payments")** plus interest, as indicated below.

4.2.1. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term, subject to the District's right to purchase the Project pursuant to section 5 herein.

4.2.2. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Master Facilities Lease.

4.2.3. Fair Rental Value. District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the Master Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Master Facilities Lease and Master Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

4.2.4. Each Payment Constitutes a Current Expense of the District.

4.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

4.2.4.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Master Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

4.2.4.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

4.2.4.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Master Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District 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 the District to carry out and perform the covenants and agreements in this Master Facilities Lease agreed to be carried out and performed by the District.

4.2.4.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Master Facilities Lease.

4.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **[Spell out] Percent (Numeric%)**:

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___
30 days thereafter	\$Numeric Lease Payments/12	\$___	\$___

30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
Total	\$Numeric Sum	\$__	\$__

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless adjusted pursuant to **Exhibit D** to the Master Facilities Lease. The Parties agree that the Lease Payments will be adjusted upon Final Completion of the Project to account for adjustments made to the Guaranteed Project Cost pursuant to the terms and conditions of **Exhibit D** General Construction Provisions.

5. District's Purchase Option.

5.1. If the District is not then in uncured default hereunder, the District shall have the option to purchase not less than all of the Project and terminate this Master Facilities Lease and Master Site Lease by paying the total remaining unpaid Lease Payments as of the date the option is exercised ("Option Price").

5.2. District shall provide Contractor no less than fourteen (14) days' prior written notice that District is exercising its option to purchase the Project as set forth above on a specific date ("Option Date"). If the District exercises this option, the District shall pay directly to Contractor the Option Price on or prior to the Option Date and Contractor shall at that time deliver to District all reasonably necessary documents to terminate this Master Facilities Lease and the Master Site Lease.

5.3. Under no circumstances can the Option Date be on or before thirty-five (35) days after the Contractor achieves Final Completion of the Project.

6. Changes to Guaranteed Project Cost.

6.1. As indicated in the Master Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed, or deducted from the next payment request from the Contractor, as applicable.

6.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications.

6.3. **Cost Savings.** Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may

be paid for out of the identified savings before it is deducted from the Guaranteed Project Cost. Contractor may be entitled to an extension of Contract Time in accordance with the provisions of Article 7.4 of **Exhibit D** General Construction Provisions, if requested in writing before the approval of the cost savings.

6.4. Insurance and Bond Reimbursements. At Project Final Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.