

PRE-DEVELOPMENT AGREEMENT

THIS PRE-DEVELOPMENT AGREEMENT (this “Agreement”) is entered into on this ___ day of August, 2019 (the “Effective Date”) by and between Napa Valley Community College District (hereinafter “District”) and The Martin Group of Companies, LLC a Delaware limited liability company (hereinafter “Martin Group”, and together with District, collectively the “Parties” and each, a “Party”), with reference to the following:

RECITALS

WHEREAS, on May 18, 2017, the District issued a Request for Qualifications (the “RFQ”) seeking qualifications from interested development managers for a student housing project (the “Project”) on the campus of Napa Valley College, located at 2277 Napa-Vallejo Highway, Napa, CA 94558.

WHEREAS, in response to the RFQ, the Martin Group submitted its qualifications, dated July 13, 2017, attached hereto as Exhibit A.

WHEREAS, the District has selected the Martin Group to perform certain pre-development management activities in furtherance of the Project.

WHEREAS, the Parties acknowledge that as a condition to the District authorizing the Martin Group to proceed with the full scope of pre-development management activities contemplated by this Agreement, the Martin Group will first need to define and refine the programmatic and other basic elements of the Project in a preliminary design and feasibility phase that the District will approve or disapprove in its sole discretion.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and Agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Pre-Development Management Generally.

A. General.

(i) The Martin Group is hereby engaged to collaborate with the District in the selection of the third-party design, engineering, construction, and other professionals necessary for the planning, design, engineering, permitting, environmental review, financing, construction, and overall development of the Project.

(ii) Subject to the conditions that the District, Martin Group, and the Project’s financing partner(s) first come to agreement on all terms, conditions, and other aspects of the Project’s structure, ownership, development, construction, financing, operation, maintenance, and management (collectively, the “Preliminary Closing Conditions”), District currently anticipates that it will, at the Project’s Financial Closing, enter into a ground lease with a non-profit special purpose entity (the “Project Company”) after issuance of a request for qualifications/proposals

("RFQ/P") and evaluation of responses to the RFQ/P, for the purposes of achieving the desired ground leasing and financing method for the Project. Following approval by the District of a plan for financing the Project, the Martin Group will provide assistance to the District for the District's proposed financing and otherwise assist the District in implementing the financing plan for the Project (all with the approval of District). In no event shall the Martin Group have any financial obligations with respect to financing.

(iii) The Parties agree to pursue all pre-development activities pertaining to the Project with a cooperative, good faith effort, with due diligence, and in a commercially reasonable manner, including without limitation, the pre-development management services to be performed by the Martin Group (the "Services," as set forth in Exhibit "B") and various types of Project delineation and support to be provided by the District, including but not limited to, identification of a useable site for the Project and providing Martin Group existing relevant reports and information it may have on the site such as environmental and geotechnical analysis, seismic reports, civil engineering surveys and feasibility reports, title opinions, market and feasibility studies and other materials associated with pre-development or other related activities previously performed by District or its consultants.

(iv) It is the goal of both Parties to achieve financial closing and to obtain the funding for the design, construction and development of the Project (the "Financial Closing") at a rental rate to be charged per bed that is affordable to District students, adjusted for inflation. The Parties will work with the Project Company towards achieving a Project that meets the inflation-adjusted rents and costs needed to finance the Project. The District acknowledges that the Martin Group cannot guarantee inflation, construction costs, prevailing wage changes, DSA requirements, and interest rates.

B. Preliminary Design and Feasibility Phase (Phase 1). Within sixty (60) days of the Effective Date, the Martin Group will prepare and submit to the District for its approval a preliminary design and due diligence analysis (the "Preliminary Analysis") with and subject to receipt of input by the District. The Preliminary Analysis will include the information and documents described in Exhibit C. The Parties agree that in the event this Agreement terminates based upon the preliminary analysis showing the Project to be infeasible in the District's sole discretion, or if for any other reason the District elects to terminate and not proceed further with the Project, the Martin Group will be reimbursed up to a total amount of Fifty Thousand Dollars (\$50,000) ("Preliminary Design Fee Cap") for its work and the work of its Professionals in connection with the Preliminary Analysis at actual costs, subject to presentment of itemized invoices without mark-up. If the District provides a notice to proceed as discussed below, then the Martin Group will be fully reimbursed for its expenses for the Preliminary Analysis, including all expenses of third party consultants and its and their reimbursable expenses at and as part of the Financial Closing, up to but not in excess of the Preliminary Design Fee Cap. The Martin Group's reimbursable expenses will not include the expenses listed in Exhibit D.

C. Pre-Development Phase (Phase 2). Upon the District's approval of the Preliminary Analysis in its sole discretion, and based thereon, the Parties will negotiate in good faith to finalize a preliminary Pre-Development and Project development schedule, Project programming and preliminary hard and soft cost budgets, which will then be attached and approved as amendments to this Agreement. Upon approval of such amendment the District shall provide the Martin Group

with a Notice to Proceed. If the Parties are unable to reach agreement, this Agreement shall terminate and be of no further force and effect and the Parties shall have no obligations under this Agreement. The Martin Group will provide the Pre-Development Services and provide the work product described in Exhibit B. (collectively, the “Pre-Development”), using the Preliminary Analysis as the reference point. In that regard, the Martin Group does hereby agree to confirm and to continue to develop and update, in a timely manner, the assumptions and projections on which the Preliminary Analysis is based, and the Parties agree to continue to engage with each other on updated schedules, budgets, and plans for, and all other aspects of, the Project. The Martin Group's Pre-Development obligations include but are not limited to the following: (i) enter into appropriate contractual agreements with Professionals to provide the Services (under direct contract with the Martin Group or through sub-contracts with contracted Professionals) described in Exhibit B; (ii) work with the Architect to complete the design phase of the Project; (iii) work with a general contractor to price the plans; (iv) work with the bond underwriter to create the financial models to facilitate underwriting of the Project; (v) submit a final Project development budget to District for the Financial Closing; and (vi) coordinate with the District for the Project's financing and the Financial Closing, the terms and conditions of each of the final Agreements for Financial Closing and other matters identified in the foregoing items (i) through (vi) being subject in all respects to the approval of the District in its sole discretion and subject to review and approval of bond underwriters.

D. Other Consultants/Sub-Consultants. The Martin Group shall meet, confer and coordinate with its consultants and sub-consultant as reasonably requested and approved by the District in the production of work related to the underwriting of the Project, as described in Exhibit B.

Nothing in this Agreement shall create any contractual relationship between the District and the third-party Professionals engaged by the Martin Group (or retained by the Professionals retained by the Martin Group), for the performance of Services listed in Exhibit B or Exhibit C of this Agreement. Except with respect to any Pre-Development Expenses and reimbursement required to be made by the District pursuant to the terms of this Agreement, the Martin Group is solely responsible for payment of any Professionals that the Martin Group retains. The Martin Group will not create or knowingly permit any liens to be recorded against the Project Site in the performance of Services pursuant to this Agreement. If a lien is recorded against the Project Site as a result of such Services, the Martin Group shall cause such lien to be released or discharged by bond or otherwise as soon as reasonably practicable following receipt of written notice from the District.

2. Designated Representative of Each Party; Notices. The Parties agree that in order to facilitate an efficient working relationship throughout the term of this Agreement, Robert Parker, primarily, or Katherine Kittel, secondarily, will serve as the designated representative and “point person” for District, and Stephen Siri, primarily, or Corrina White, secondarily, will serve in the same capacity for the Martin Group. Certainly, others will be actively involved in the process, but all official communication should flow through these designated representatives who will have overall responsibility for communication between the Parties with respect to the Project. Each Party may replace or appoint additional designated representative(s) from time-to-time upon written notice to the other Party. Every notice, request or other statement to be made or delivered to a Party pursuant to this Agreement shall be directed to such Party at the address or email given

immediately below such Party's signature on this Agreement or to such other address or email as the Party may designate in writing from time-to-time. Each Party, by written notice to the other Party, shall have the right to specify one additional address to which copies of notices shall be sent. Except as provided otherwise in this Agreement, any notice, request, statement, payment, or other communication (including, without limitation, by e-mail or mail where transmission confirmation is received) shall be deemed to have been given on the date on which it is received by the recipient.

3. Term; Termination.

A. Term. The term and effectiveness of this Agreement (the "Term") shall commence upon the Effective Date and shall terminate upon the earliest to occur of the following:

- (i) the effective date of the Financial Closing of the Project;
- (ii) the effective date of any termination of this Agreement by District pursuant to Section 3(B);
- (iii) the effective date of any termination of this Agreement by District pursuant to Section 5;
- (iv) the termination of this Agreement by either Party as a result of a material breach or default by the other Party of any of its undertakings or obligations under this Agreement which has not been cured within thirty (30) working days after receiving written notice of such breach or default from the non-defaulting Party (should the defaulting Party not take steps or present a plan to cure the default within ten (10) working days' of such written notice, the non-defaulting Party shall have the right to suspend or stop work until such efforts have begun in earnest or such plan is presented);
- (v) such other date as the Parties may mutually agree in writing; and
- (vi) Two calendar years from the Effective Date of this Agreement.

B. District Termination Rights. In addition to any other rights it may have under this Agreement, at law, in equity, or otherwise, District may unilaterally terminate this Agreement for its convenience at any time during the term of this Agreement (a "Termination for Convenience") upon thirty (30) working days' prior written notice to the Martin Group. The date on which the Martin Group receives such notice is referred to herein as the "Termination for Convenience Notice Date."

4. Exclusivity. During the Term, District agrees to negotiate exclusively with the Martin Group with respect to the Pre-Development and development of the Project as set forth in this Agreement.

5. Pre-Development Schedule. The Martin Group (with the cooperation of District) will work toward the following preliminarily estimated schedule for the Project: (i) Financial Closing May 2021; (ii) construction June 2021 through May 2023; and (iii) student move-in August 2023. The Parties acknowledge that the aforementioned schedules, as well as the schedule for the Preliminary

Analysis and Pre-Development, constitute non-binding good faith progress goals which the Parties intend to work together in good faith to achieve, subject to the Parties' rights and remedies under this Agreement and may be adjusted after the Preliminary Analysis and as appropriate during the Pre-Development phase.

6. Pre-Development Expenses, Pre-Development Fee, and Termination.

A. Accrual and Payment of Pre-Development Expenses. The Martin Group has expended and will continue to expend, in good faith, money to engage Professionals in furtherance of the Preliminary Analysis and Pre-Development for the Project. The Preliminary Analysis will identify the Pre-Development Budget, to be approved by the District in its sole discretion, and as may be amended and updated from time to time, for Pre-Development Expenses. Pre-Development Expenses include, without limitation, certain expenses incurred by Martin Group directly related to the Project prior to the Effective Date of this Agreement and that are not associated with Martin Group's pursuit of the Project award. Pre-Development Expenses shall be presented to District for approval on a progress basis and upon District's approval, these Pre-Development Expenses shall be considered accrued Pre-Development Expenses. Subject to Sections 1C (regarding Preliminary Analysis) and 6B (regarding payments upon termination), Pre-Development Expenses will be paid to the Martin Group at and as part of the Financial Closing. District's liability for Pre-Development Expenses incurred by Martin Group prior to the Effective Date of this Agreement shall not in any event exceed the aggregate amount of \$50,000 and such District liability shall be governed by the conditions set forth in Sections 6(B)(i), 6(B)(ii), and 6(B)(iii)

B. Accrual and Payment of Pre-Development Fee. The Pre-Development Fee to the Martin Group shall be referred to in this Agreement as the "Pre-Development Fee" and shall accrue pro rata on a monthly basis per the agreed upon Pre-Development Schedule and Project budget provided and approved as part of the Notice to Proceed after the Preliminary Analysis, and to be deemed fully earned and paid at Financial Closing. The Pre-Development Fee shall be paid to the Martin Group as more fully described in Section 8 below:

(i) District Termination for Convenience. If District exercises its Termination for Convenience rights under Section 3(B) solely for reasons entirely within its control, then District shall, within 30 days after the effective date of such termination, reimburse Martin Group in an amount equal to the Pre-Development Expenses and pro rata Predevelopment Fee incurred through the effective date of the Termination for Convenience.

(ii) Termination for Martin Group Default. If District exercises its termination rights under Section 3(A)(iv) (subject to the notice and cure rights therein), due to a breach or default by Martin Group, then District shall within 30 days after the effective date of such termination, reimburse Martin Group in an amount equal to the Pre-Development Expenses and pro rata Predevelopment Fee incurred through the effective date of the Termination less any sums in dispute or alleged damages to be retained and resolved in accordance with this Agreement.

(iii) Mutual, Term or Closing Risks Termination. If the Agreement is terminated under sections 3(A)(v) or 3(A)(vi) or if at any time during the Term, the Parties determine and agree that the viability of the Project is jeopardized due to changes in entitlements,

land use or other legal or environmental restrictions outside the control of the District, or Force Majeure Event affecting the Project (the “Closing Risks”), the Parties shall work together in good faith to maintain the viability of the Project, either through modifications to various aspects of the Project, modifications to the transaction structure for the Project, or otherwise. If despite such efforts of the Parties, the Parties mutually determine in good faith that the Project is no longer viable due to the Closing Risks, then District shall pay Martin Group an amount equal to the Pre-Development Expenses actually incurred by Martin Group as of such date. In addition, the District shall have the obligation to pay to Martin Group fifty percent (50%) of the Pre-Development Fee pro-rated through the date of termination. The sums paid by the District shall be each such Party’s sole and exclusive remedy. In any circumstance where there are delays or losses due to CEQA, DSA, government, lawsuits or any other regulatory entity, then the District will intercede on the Project’s behalf and if the issues cannot be resolved agrees to take on all third-Party costs and fees and/or extend this Agreement through resolution (example would be that student housing could not be built on this site and no other suitable site could be identified).

(iv) Default by District. If District fails to pay Pre-Development Expenses or Pre-Development Fee when due under this Agreement, or if District fails to fulfill or perform any other material obligation under this Agreement, then subject to the notice and cure provisions in Section 3(A)(iv), the Martin Group shall, without prejudice to any other right or remedy and after giving District three (3) business days' written notice, have the right to suspend or terminate the performance of its Services hereunder and/o exercise any other remedies under this Agreement.

(v) Use of Work Product. If the District, or any entity affiliated or working for it, uses the work of the Martin Group or its retained Professionals for the Project or otherwise to provide housing within five years of the termination of the Agreement, it will compensate the Martin Group the full amount of the unpaid balance of the Pre-Development Fee

C. Definition of Force Majeure. As used in this Agreement, the term “Force Majeure” means an event, circumstance, cause, or condition that is beyond the reasonable control of, and without the fault or negligence of, a Party and includes, without limitation: (a) sabotage, riots, or civil disturbances; (b) acts of God; (c) acts of a public enemy; (d) terrorist acts affecting a Party, the District's Napa Campus, the District, or the Project; or (e) volcanic eruptions, earthquake, hurricane, tsunami, flood, ice storms, explosion, fire, lightning, landslide, or similarly cataclysmic occurrence. Economic hardship of or suffered by a Party shall not constitute a Force Majeure event under this Agreement. Furthermore, the settlement of strikes or labor disturbances are deemed to be wholly within the control of the Party whose performance is prevented or delayed by the same, such that strikes or labor disturbances also shall not constitute Force Majeure events.

D. Transfer of Ownership of All Plans, Designs, Documents, and Other Work Product. Subject to District’s payment to Martin Group of the amounts required under this Agreement, including pursuant to Section 6(B), Martin Group shall transfer, assign, and convey to District (or its nominee or designee) good and marketable title and ownership (free and clear of any and all liens, security interests, and other encumbrances of any nature whatsoever) to, and all right title and interest in, all plans, designs, design models, drawings, documents, data, intellectual property, materials, things, and other work and work product developed for or in connection with, or relating in whole or in part to, the Development or the Project. In furtherance of the foregoing, Martin Group shall execute and deliver to District such deeds, bills of sale, assignments, and other

documents and instruments as District may reasonably request in order to effect or otherwise evidence such transfer, assignment, and conveyance to District (or its nominee or designee).

7. Development Agreement. District will, at the Martin Group's request, and subject to final approval of the Development Agreement by the District, negotiate in good faith with the Martin Group a definitive development agreement for the Project to be effective at the Financial Closing (a "Development Agreement") for the delivery of services, to be set forth in the Development Agreement, as appropriate, to complete the design, construction, approvals and delivery of the Project. The Development Agreement shall provide for payment to Martin Group at market rate for construction management services and construction administrative services. The Martin Group will have no financial obligations with respect to the construction phase under the Development Agreement.

8. Structure And Payment Of Pre-Development Fee. Martin Group agrees that its Development Fee (including for Pre-Development and services under a Development Agreement) shall be accrued and paid as follows: The Pre-Development Fee under this Agreement shall be accrued and paid in the following manner: (i) 50% of the total Development Fee shall accrued over the period of the Pre-Development services phase to be paid at the Financial Closing such that all of the Pre-Development Fee is fully paid in a lump sum at the Financial Closing; (ii) 40% of the total Development Fee to be paid in equal monthly installments during the construction period; and (iii) 10% of the total Development Fee to be paid in a lump sum upon the granting of a certificate of occupancy (or its equivalent) for the Project. The Parties agree that the sums and timing of those payments must be acceptable to the Project's sources of financing. The total Development Fee will be five percent (5%) of total Program Costs, (hard and soft costs excluding land or financing costs) as identified and approved in the amendment of this Agreement upon issuance of the Notice to Proceed with Pre-Development. The Development Fee shall be paid from the financing structure for the Project and the District shall have no liability for payment of any portion of the Development Fee.

9. Asset Management. The Martin Group, or subsidiary or affiliate thereof, will be hired upon substantial completion of construction and for an agreed upon period by the Project Company through a separate asset management agreement to oversee or manage the District the Project on behalf of the Project Company. The Martin Group agrees that, if necessary for the Project to be financially feasible, it will subordinate 25% of its asset management fee (1.25% of gross revenue), which shall be paid after financing audits are performed for that annual period and the project achieves a debt coverage ratio of 1.20. Should the Project achieve a debt coverage ratio of 1.20 or higher for three consecutive years, the requirement to subordinate 25% of the management fee will terminate. The District shall have not liability for payment of the asset management fee.

10. Supporting Documentation; Audits.

A. Supporting Documentation. Martin Group shall submit monthly reports to District with appropriate documentation evidencing the incurrence of each of the Pre-Development Expenses and the pro rata calculation of all or any portion of the Pre-Development Fee in the form of copies of invoices, receipts, vouchers or the like, in order for Martin Group and District to determine that such items constitute Pre-Development Expenses incurred, or a Pre-Development Fee payable, in accordance with the terms and conditions of this Agreement.

B. Audit. At its option, District, at District expense, may from time to time, at its expense, review the books, accounts, and financial information of Martin Group regarding the Pre-Development efforts, including by being audited by an independent auditor selected by District. Martin Group agrees to cooperate with such auditor and to make any of its books, accounts and financial information of Martin Group regarding the Project available to the District or such auditor. If an audit discloses a material discrepancy (*i.e.*, a discrepancy by more than three percent in the aggregate with respect to the expenses or fees being audited). Any adjustments in amounts due and owing by either Party to the other Party shall be promptly paid by the Party owing the amounts due.

11. Labor and Wages.

A. Martin Group shall pay, and cause its Professionals to pay or cause to be paid by its consultants and contractors, each worker employed in the construction, rehabilitation, or building maintenance services of the Project not less than the prevailing wage rate for the worker's craft or trade as determined by the California Division of Labor. Project will be registered with the DIR.

B. Martin Group and Martin Group's Professionals shall comply with all State and Federal laws.

(i) Martin Group and its Professionals shall ensure that every employee, worker, or agent of each or either of them has all required licenses and training to perform the services for which engaged and is lawfully authorized to work and to perform such services. Martin Group and its Professionals shall ensure that every employee, worker, and agent of each or either of them is aware of and agree to abide by District policies and procedures at all times on District property and while interacting with any District personnel or students. The District's policies and procedures are available upon request. To the extent any of the policies and procedures are amended during Pre-Development, District shall provide written notice of the changes or modifications within 10 working days of the changes taking effect. If District reasonably determines that any person associated with Martin Group or its Professionals has violated District policies, such person shall be removed from and prohibited access to District Property. If requested by the removed person, the District will provide a written explanation.

12. Alternative Dispute Resolution. The Parties agree that any dispute between the Parties arising from or in any way related to this Agreement or the Project will first attempt to be resolved through non-binding mediation with a mediator that is mutually agreeable to the Parties, and if the Parties are unable to resolve any such dispute in non-binding mediation, then any such dispute shall be resolved through the Napa County Superior Court. Both Parties shall share the costs of the dispute resolution process equally, although the attorneys and witnesses or specialists utilized by the respective Parties shall be the direct responsibility of each Party engaging such attorneys, witnesses, or specialists, and their fees and expenses shall be the responsibly of the respective Parties.

13. Entire Agreement. This Agreement and the Exhibits A-C attached hereto (which are incorporated into this Agreement by this reference) constitute the entire Agreement between the

Parties relating to the subject matter hereof, and may be amended, modified, or supplemented only in a writing executed by each Party.

14. Due Authorization; Binding Agreement. Each Party represents and warrants (as to itself only) that the signatory signing on behalf of such Party is duly authorized by such Party to execute and deliver this Agreement on behalf of such Party, and by its signature does bind such Party to the terms of this Agreement.

15. Controlling Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California (without reference to its conflict of law principles), and the United States, including but not limited to any law pertaining to prevailing wage, discrimination, and professional conduct.

16. No Partnership or Joint Venture. The Parties agree that nothing herein shall serve to create any agency, employment, or other master-and-servant, partnership, joint venture, or fiduciary relationship between the Parties.

17. Audit. The Parties understand that if this Agreement involves the expenditure of public funds in excess of \$10,000, it is subject to examination and audit by the California State Auditor, pursuant to *Government Code* Section 8546.7.

18. Martin Group Hold Harmless Of District.

A. General. Martin Group shall hold District harmless for, from, and against any and all third-Party Claims (as defined in Section 18(C)), to the extent caused by Martin Group's: (i) breach of any obligation, representation, or warranty contained herein; and/or (ii) negligence or willful misconduct. Without limiting the generality of the foregoing, Martin Group shall also indemnify, defend, and hold harmless District for, from, and against any and all Claims arising out of, relating to, or in connection with: (1) any payment or other claim or dispute between Martin Group, on the one hand, and any of the consultants, contractors, or subcontractors (of any tier) of Martin Group, on the other hand (if such payment or other claim or dispute is not a result of any payment or other claim or dispute between District and Martin Group pertaining to this Agreement, or any aspect of the Project); (2) the acts or omissions of, or the misconduct of, any consultants, contractors, or subcontractors (of any tier) of Martin Group; and/or (3) a failure of Martin Group to obtain District's approval or consent where required under this Agreement. The obligations of Martin Group under the foregoing provision shall survive the expiration or earlier termination of this Agreement with respect to any Claims arising prior to such termination. The obligations of Martin Group under this Section 18(A) shall be independent of, and in addition to, those of Martin Group under Section 18(B). In no event shall Martin Group's obligations under this Section 18(A) be limited to or by the amounts (if any) of insurance proceeds recovered by it with respect to such obligations or otherwise.

B. Environmental. Martin Group shall indemnify, defend, and hold harmless District and its Indemnified Parties for, from, and against Claims directly arising out of or relating to any Martin Group Environmental Conditions, but not including any Claim to the extent contributed by, arising out of or exacerbated by District conduct or property conditions. Each Party shall promptly notify the other Party if it becomes aware of any presence, deposit, spill, or release of (or

exacerbation of any presence, deposit, spill, or release of) any Hazardous Substance on or about the District's campus. The indemnity obligations of Martin Group under this Section 18(B) shall survive the expiration or earlier termination of this Agreement with respect to any Claims arising prior to such termination. The indemnity obligations of Martin Group under this Section 18(B) shall be independent of, and in addition to, those of the Parties under Section 18(A). In no event shall District's indemnity obligations under this Section 18(B) be limited to or by the amounts (if any) of insurance proceeds recovered by District with respect to such obligations or otherwise.

C. Certain Defined Terms. As used in this Section 18:

(i) the term "Claims" means any and all liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, costs, expenses, and disbursements (including, without limitation, reasonable, actually incurred legal fees, expenses, and costs of investigation) of any kind and nature whatsoever, including, without limitation, those arising out of property damage and personal injury and bodily injury (including, without limitation, death, sickness, and disease);

(ii) the term "Hazardous Substance" means any substance, waste or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, including, without limitation, petroleum, its derivatives, by-products and other hydrocarbons and asbestos, and which is or becomes regulated by any applicable governmental authority, including, without limitation, but only to the extent applicable, any agency, department, commission, board, or instrumentality of the United States, the State of California or any political subdivision thereof; and

(iii) the term "Martin Group Environmental Conditions" means: (a) any Hazardous Substances or objects creating dangerous environmental conditions that are introduced, transported, or brought to the District Napa Campus property by Martin Group, any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Martin Group's authority or control; (b) any Hazardous Substances or dangerous environmental conditions are spilled, released, created, or otherwise exacerbated by Martin Group (and with the discovery by Martin Group and/or any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Martin Group's authority or control; and/or (c) Martin Group, any of its consultants, contractors, or subcontractors (of any tier) or any other person or entity under Martin Group authority or control engages in conduct (or fails to engage in conduct) in violation of any applicable law, rule, or regulation pertaining to Hazardous Substances;

D. Insurance Requirements. Martin Group, at its sole cost and expense, shall insure its activities in connection with this Agreement, and/or cause the Professionals to insure such activity, as appropriate. In the event that Martin Group hires any contractors or consultants to perform any part of this Agreement, Martin Group is responsible for ensuring that these insurance provisions shall apply to each contracting entity. Martin Group, and each of its contractors and consultants of any tier, shall obtain, keep in force, and maintain insurance as follows (except that Martin Group sub-contractors may maintain limits of \$2,000,000 per occurrence with a \$4,000,000 annual aggregate for the general liability insurance, and with respect to Excess Liability coverage, it is Martin Group's option to determine the limit of excess liability that it will require the Professionals, contractors, and consultants to maintain):

(i) Comprehensive or Commercial Form General Liability Insurance (contractual liability included) as follows:

- (a) Each Occurrence: \$1,000,000
- (b) Products/Completed Operations Aggregate: \$2,000,000
- (c) Personal and Advertising Injury: \$1,000,000
- (d) General Aggregate: \$2,000,000

However, if any such insurance is written on a claims-made basis, coverage shall continue for a period of not less than three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Agreement.

(ii) Martin Group will carry Professional Liability Insurance covering its negligent acts, errors, and omissions with a minimum limit of \$1,000,000 for each claim. In addition, architectural and other licensed professionals will carry Professional Liability Insurance with minimum limits of \$2,000,000 and \$4,000,000 in the aggregate. If the above insurance is written on a claims-made basis, it shall continue for the latter of three years following termination of this Agreement or five years following the termination of any Development Agreement entered into by the Parties for the construction of the Project. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of any professional services performed for this Agreement. Such coverage shall be required of each design architect, engineer, or consultant hired directly or indirectly to perform professional services for this Agreement, and shall include District as an indemnified Party for vicarious liability caused by professional services performed for this Agreement.

(iii) Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of \$1,000,000 per occurrence.

(iv) Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of \$5,000,000 per occurrence, \$5,000,000 general aggregate, and \$5,000,000 products/completed operations.

(v) Workers' Compensation and Employer's Liability Insurance as required by California law and with an insurance carrier registered with the California Insurance Commission.

Insurance required under 18.D.i, 18.D.ii, 18.D.iii, 18.D.iv, and 18.D.v of Section 18 shall be issued by companies licensed to do business with a Best rating of A(XI)- or better and a financial classification of VIII or better (or an equivalent rating by Standard & Poor's or Moody's), or as otherwise reasonably acceptable to District.

The insurance coverage referred to under 18.D.i, 18.D.ii, 18.D.iii, and 18.D.iv of this Section 18 shall be endorsed to include District, its trustees, directors, officers, agents,

employees, volunteers, consultants, representatives, and representative's consultants, and the State of California as additional insureds.

In the event that Martin Group receives notice from an insurer of any modification, change or cancellation of any of the above insurance coverage, it will provide a copy of such notice to District within three business days thereof. If insurance policies are canceled for non-payment, District reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Martin Group, which assessments shall be a set-off from any payment or distribution of funds due to Martin Group under this Agreement, if still outstanding at the time of the distribution/payment.

Martin Group, upon the execution and continuously during this Agreement, shall furnish District with Certificates of Insurance acceptable in form to District evidencing compliance with all requirements noted above in Sections 18.D.i, 18.D.ii, 18.D.iii, 18.D.iv, and 18.D.v.

To the extent Martin Group has to expend additional funds to achieve the requested insurance coverage, such additional expenses shall be a Pre-Development Expense.

19. Confidentiality; Publicity.

A. Confidential Information. "Confidential Information" shall mean information that is identified as "Confidential" by a Party and that is disclosed in connection with this Agreement. Without limiting the generality of the foregoing, Confidential Information may include: (i) technical and financial information relating to the Project; (ii) information relating to either Party, its ownership, operations, assets, financial, development and operating plans, status and condition, business, contractual Agreements or arrangements and the District's campus; and (iii) correspondence, proposals, and other documents.

B. Exclusions. Notwithstanding the foregoing, Confidential Information shall not include any information that: (1) is in or enters the public domain through no fault of the receiving Party; (2) lawfully was known or becomes known to the receiving Party independent of any disclosure in connection with this Agreement, (3) is disclosed to the receiving Party by another person or entity having a bona fide right to disclose it; (4) is independently developed by a receiving Party; (5) is included in District's Board of Trustees' public meeting agenda; or (6) is subject to disclosure under the California Public Records Act or the Brown Act.

C. Use of Confidential Information. Any Confidential Information shall be used by the receiving Party only for the purposes of performing its obligations under this Agreement or otherwise in connection with the Project.

D. Disclosure of Confidential Information. During the term of this Agreement, neither Party shall disclose Confidential Information to any third Party other than as provided for herein. The following exceptions shall not be construed as a violation of this section: a Party may disclose Confidential Information to: (a) its affiliates, agents, consultants, accountants, representatives, and legal counsel of such Party in connection with the Project, or otherwise as is reasonably necessary with respect to the Project, whether in connection with the fulfillment of the Preliminary Closing Conditions, pursuing the Financial Closing, or otherwise; (b) in connection with an assignment permitted by Section 21; (c) the Project's financing Parties, in each case provided that such

disclosure is subject to confidentiality requirements substantially similar to those set forth herein and (d) Compelled Disclosures as provided in this Section 19(F). The receiving Party shall take such steps to protect Confidential Information as such Party normally takes to preserve and safeguard its own information of a similar kind.

E. Publicity. Neither Party shall make any public announcement regarding this Agreement without the prior written consent in each instance of the other Party, which consent will not be unreasonably withheld. Any such public announcement must be in form and substance approved by both Parties in each instance, but the Parties mutually acknowledge that because the Agreement relates to a development for a public entity, public announcements about the Project will be needed from time to time.

F. Compelled Disclosures. If the receiving Party or any of its representatives is compelled by an administrative or judicial order to disclose any Confidential Information, or if District receives a California Public Records Act request identifying disclosable records, then, to the extent permitted by applicable law, the receiving Party shall: (a) promptly, and prior to such disclosure, notify the disclosing Party in writing of such requirement or records requested so that the disclosing Party can seek a protective order or other remedy or waive its rights under this section; and (b) provide reasonable cooperation to the disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure.

G. Other Public Entities. District is required to interact with multiple other public entities in its operations, and in furtherance of this Agreement and the Project, including entities with governance authority in the State of California. If requested in writing by the Martin Group, District will designate documents containing Confidential Information as “confidential” in transmitting them to other public entities, but the Parties acknowledge that District has no capacity to control the actions of such other public entities.

20. Entry Upon Site. District hereby grants to Martin Group, and to its agents, contractors, and employees engaged by Martin Group to provide services outlined in Exhibit B during the term of this Agreement, the right to enter upon the Project site for the purpose of conducting such services. Martin Group, and its agents, contractors, and employees, shall: (a) provide 24 hour advance notice prior to entry upon site, (b) not unreasonably interfere with the operation and maintenance of the District’s campus; (c) not damage any part of the District’s campus or any personal property thereon; (d) not injure or otherwise cause bodily harm to District, its agents, contractors, employees, students, or visitors; (e) promptly pay when due the costs of all tests, investigation, and examinations done with regard to the Project; (f) not permit any liens arising by reason of Martin Group’s actions in connection with this Agreement to remain attached to the Project for more than ten days after receipt of written notice thereof; and (g) restore the District’s campus to the condition in which the same was found before any such inspection or tests were undertaken[to the extent possible]. Martin Group and its agents, consultants shall, at its sole cost and expense, comply with all applicable federal, state, and local laws, statutes, rules, regulations, ordinances, and policies in conducting its inspection for the Project. Martin Group shall and does hereby agree to indemnify, defend, and hold District harmless from and against any and all claims, demands, suits, obligations, payments, damages, losses, penalties, liabilities, costs, and expenses (including but not limited to attorneys’ fees) arising out of actions taken in, on, or about the District’s campus in the exercise of the inspection and testing rights granted under this Agreement by Martin Group

or its agents; provided, however, that Martin Group shall have no liability with respect to any reduction in value of the District's campus due to information merely discovered by Martin Group during its Pre-Development Activities or other loss, damage, or expense resulting from a legal obligation of Martin Group or its agents to report a matter pertaining to the Project. This Section 20 shall survive any termination of this Agreement for so long as any potential liabilities or causes of action related to the activities of Martin Group or its agents are legally cognizable in any court of law.

21. Assignment. Neither Party shall assign this Agreement, or any of its rights hereunder, without the prior written consent of the other Party, in each instance, provided only that District's interests and obligations hereunder shall automatically pass to any successor agency.

22. Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

23. Counterparts. This Agreement may be executed in one or more counterparts and by the Parties under separate counterparts, any one of which need not contain the signatures of more than one Party, but all of which when taken together shall constitute one and the same instrument notwithstanding that both Parties have not signed the same counterpart hereof.

24. Performance. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF.

25. Calculation of Time. The time in which any act required or permitted by this Agreement is to be performed shall be determined by excluding the day upon which the event occurs from whence the time commences. If the last day upon which performance would otherwise be required or permitted is a Saturday, Sunday, or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday, or holiday. To the extent the time period is defined by "working days", working days shall be based on a five day work week (Monday-Friday), regardless of whether the District is working on a four or five day work week but excluding District approved holidays.

26. Integration. This Agreement constitutes the entire understanding and Agreement of the Parties, and all prior agreements, understandings, representations, or negotiations are hereby superseded, terminated, and canceled in their entirety, and are of no further force or effect.

27. Amendment. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by the both District and Martin Group.

28. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance, or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law.

29. Independent Contractor. The Martin Group shall perform its Services pursuant to this Agreement as an independent contractor and not as an agent or employee of the District.

30. Martin Group Hiring. The Martin Group shall not hire any officer or employee of the District to perform any service pursuant to this Agreement.

31. Legal and Regulatory Compliance. The Martin Group shall perform all services pursuant to this Agreement and prepare documents in compliance with the requirements of laws, codes, rules, regulations, and ordinances applicable to the Project.

32. Conflict of Interest. The Martin Group affirms that to the best of its knowledge, as of the Effective Date, the Services under this Agreement shall be performed on an arms-length basis, and Martin Group does not have a direct or indirect ownership interest in the Parties with whom it is contracting for the Services.

THE MARTIN GROUP OF COMPANIES DISTRICT

By: _____
Title: _____

By: _____
Title: Assistant Superintendent/Vice President,
Administrative Services

Exhibit A

(See Attached)

Exhibit B

Predevelopment Services

Once the District approves the Preliminary Analysis and provides the Martin Group with a notice to proceed, Martin Group will provide the following Services and work product:

Currently estimated: 18 months to complete (approximately November 2019 to April 2021, depending initially on receipt of Notice to Proceed, CEQA requirements and review of regulatory requirements):

I. Services.

- a. Direct architect (and other Professionals, e.g., landscape architect etc.) to prepare concept plans that will include an initial site plan, floor plans, unit tabulations, and initial design concepts.
- b. Direct third-party general contractor to prepare concept pricing.
- c. Direct third-party student housing property managers to provide an operating expense budget.
- d. Develop preliminary pre-development and development Project budgets.
- e. Provide and update preliminary Project schedule.
- f. Coordinate with selected Professionals approved by the District to develop a pro-forma for preliminary financial underwriting for public-private partnership 501(c)(3) bond financing for the Project. This will be used to conclude whether Project financing is feasible.
- g. If Project financing is feasible, Martin Group will present to the Board of Trustees an overview of the next phases, which would be the Project development and delivery phases and would include, but not be limited to, the issuance of a Request for Proposals from developers, the selection of a 501(c)(3) entity, the issuance of bonds, District's delivery of a ground lease of the Project site, and the commencement of construction.

II. Work Products.

- a. Project Design
 - i. Schematic Drawings
 - ii. Design Development Drawings
 - iii. Construction Drawings
- b. Regulatory Approvals
 - i. DSA Approvals / Permits
 - ii. Local Fire Department

- c. Construction Costs
 - i. Pre Development Budgets
 - ii. GMP Budget

- d. Pro-Forma Analysis
 - i. The Martin Group to prepare updates at the completion of schematics, design development and construction drawings

- e. Legal
 - i. Design & Engineering Contracts
 - ii. Pre-Construction and Construction Contracts
 - iii. Financial Bond Underwriting Agreements
 - iv. Title Policies
 - v. Development Agreement

Exhibit C

Preliminary Analysis

- a. Prepare conceptual architectural plan and receive Napa Valley College approval which would include the following:
 - i. Site Plan
 - ii. Floor Plans
 - iii. Unit Tabulations (# of units, # of beds, common area square footage, parking count)
- b. Due Diligence to be conducted by the Marin Group and its consultants
 - i. Initial Environmental Report
 - ii. Initial Geotechnical Reports
 - iii. Initial Civil Survey / Diligence
 - iv. Local government outreach and request a second DSA meeting
- c. Preliminary Costs Estimates
 - i. The Martin Group will work with 3rd party general contractors to prepare initial pricing
 - ii. The Martin Group will prepare a preliminary project soft cost budget including architecture/engineering fees, insurance, permits, financing costs, legal, accounting, furniture, etc.
- d. Preliminary Operating Expenses
 - i. The Martin Group will work with a third party property manager to prepare initial operating expenses
- e. Market Research
 - i. The Martin Group will further discuss Scion's final market study.
- f. Preliminary Financing
 - i. The Martin Group will work with selected Professionals approved by the District to initially underwrite the project and receive preliminary feedback.

Exhibit D

Non-Reimbursable Expenses

- a. Cost of gross salary and wages, payroll taxes, insurance, worker's compensation, pension benefits and any other benefits of the Martin Group's office or personnel not permanently assigned to the Property on a full-time basis.
- b. General accounting and reporting services.
- c. Cost of forms, stationery, ledgers and other supplies and equipment used in the Martin Group's office.
- d. Cost or pro rata cost of telephone and general office expenses incurred by the Martin Group for the operation and management of properties not owned by Company.
- e. Cost or pro rata cost of electronic data processing equipment (whether located at the Property or the Martin Group's office) or for electronic data processing provided by computer service companies.
- f. Cost of all bonuses, incentive compensation, profit sharing, or any pay advances by the Martin Group to the Martin Group's employees.
- g. Cost of owned automobiles.
- h. Cost attributable to losses arising from criminal acts or from negligence or fraud on the part of the Martin Group's associates or employees.
- i. Cost of insurance purchased by the Martin Group for its own account.