

**COMPTON COMMUNITY COLLEGE DISTRICT**  
**BID AND CONTRACT DOCUMENTS**  
**CCC-029 BOILER REPLACEMENT PROJECT**  
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**NOTICE TO CONTRACTORS CALLING FOR BIDS**

<b>DISTRICT</b>	COMPTON COMMUNITY COLLEGE DISTRICT
<b>PROJECT DESCRIPTION</b>	CCC-029 BOILER REPLACEMENT PROJECT
<b>MANDATORY JOB WALK:</b>	2:00 PM Friday, February 26, 2016 @ 2:00 PM Building: Administration Office/Room: Compton CCD Board Room
<b>LATEST TIME/DATE FOR SUBMISSION OF BID PROPOSALS</b>	2:00 PM Wednesday, March 09, 2016
<b>LOCATION FOR SUBMISSION OF BID PROPOSALS</b>	COMPTON COMMUNITY COLLEGE DISTRICT 1111 East Artesia Boulevard Compton, CA 90221 Building: C - Row Office/Room: C34
<b>LOCATION FOR OBTAINING BID AND CONTRACT DOCUMENTS</b>	Website: <a href="http://district.compton.edu/administration/businessadmin/Bid_Proposal_Requests.asp">http://district.compton.edu/administration/businessadmin/Bid_Proposal_Requests.asp</a>

NOTICE IS HEREBY GIVEN that the above-named California Community College District, through its Board of Trustees ("the District") will accept Bid Proposals for the Contract for **CCC-029 BOILER REPLACEMENT PROJECT** ("the Work").

1. Submittal of Bid Proposals. All Bid Proposals shall be submitted on forms furnished by the District at or prior to the date and time set forth above.
2. Bid and Contract Documents. The Bid and Contract Documents for CCC-029 Boiler Replacement Project can be obtained from [http://district.compton.edu/administration/businessadmin/Bid\\_Proposal\\_Requests.asp](http://district.compton.edu/administration/businessadmin/Bid_Proposal_Requests.asp) ,
3. Documents Accompanying Bid Proposal. Each Bid Proposal shall be accompanied by: (i) the required Bid Security; (ii) Subcontractors List; (iii) Non-Collusion Affidavit; (iv) Statement of Bidder's Qualifications; and (v) Verification of Contractor and Subcontractor DIR Registration. In addition to the foregoing, the Bidders submitting the three (3) lowest priced Bid Proposals shall submit DVBE Worksheets within the time established in the DVBE Program Policy.
4. Prevailing Wage Rates. The Contractor and all Subcontractors shall pay not less than the applicable prevailing wage rate for the classification(s) of labor provided by their respective workers; prevailing wage rates are available for review at [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). During the Work, the Department of Industrial Relations ("DIR") will monitor compliance with prevailing wage rate requirements and enforce the Contractor's prevailing wage rate obligations.

5. Bidder and Subcontractors DIR Registered Contractor Status. Each Bidder must be a DIR Registered Contractor when submitting a Bid Proposal. The Bid Proposal of a Bidder who is not a DIR Registered Contractor will be rejected for non-responsiveness. All Subcontractors identified in a Bidder's Subcontractors' List must be DIR Registered contractors at the time the Bid Proposal is submitted. The foregoing notwithstanding, a Bid Proposal is not subject to rejection for non-responsiveness for listing Subcontractor(s) on the Subcontractors List who is/are not DIR Registered contractors if such Subcontractor(s) complete DIR Registration pursuant to Labor Code §1771.1(c)(1) or (2). If any listed Subcontractor(s) who is/are not DIR Registered contractors and such Subcontractor(s) do not become DIR Registered pursuant to Labor Code §1771.1(c)(1) or (2), but the Bidder, if awarded the Contract, must request consent of the District to substitute a DIR Registered Subcontractor for the non-DIR Registered Subcontractor pursuant to Labor Code §1771.1(c)(3), without adjustment of the Contract Price or the Contract Time.
6. Contractors' License Classification. The District requires that Bidders possess the following classification(s) of California Contractors License at the time that the Contract for the Work is awarded: B - General Building.
7. Contract Time. Substantial Completion of the Work shall be achieved as set forth in the Contract Documents; Liquidated Damages will be assessed for delayed Substantial Completion.
8. Disabled Veteran Business Enterprises ("DVBE") Participation Goal. Pursuant to Military & Veterans Code §999.2, the District has established a Good Faith Participation Goal for DVBEs of three percent (3%) of the value of the Work. The District's DVBE Participation Goal Policy ("DVBE Policy") is set forth in the Contract Documents. The responsible Bidders submitting the three (3) lowest priced responsive Bid Proposals shall submit to the District, within the time established in the DVBE Policy, DVBE Worksheets establishing achievement of the DVBE Participation Goal or Good Faith Efforts to achieve the DVBE Participation Goal. Failure of any such Bidders to comply with the DVBE Worksheet submission requirements will result in rejection the Bidder's Bid Proposal for non-responsiveness.
9. Bid Security. Each Bid Proposal shall be accompanied by Bid Security in an amount not less than ten percent (10%) of the maximum amount of the Bid Proposal, inclusive of any additive Alternate Bid Item(s). A Bid Proposal not accompanied by the required Bid Security is non-responsive and will be rejected by the District.
10. Alternate Bid Items. If the bidding include(s) Alternate Bid Items for which each Bidder must propose pricing for each Alternate Bid Item, the District's selection of Alternate Bid Items for determination of the lowest bid shall be as set forth in the Instructions to Bidders.
11. No Withdrawal of Bid Proposals. Bid Proposals shall not be withdrawn by any Bidder for ninety (90) days after the opening of Bid Proposals. During this time, all Bidders shall guarantee prices quoted in their respective Bid Proposals.
12. Job-Walk. The District will conduct a Mandatory Job Walk on Friday, February 26, 2016 beginning at 2:00 PM Bidders are to meet at Compton CCD's Board Room for conduct of the Job Walk. If the Job Walk is mandatory, the Bid Proposal submitted by a Bidder whose representative(s) did not attend the entirety of the Mandatory Job Walk will be rejected by the District as being non-responsive.
13. Pre-Bid Inquiries. Bidders may submit pre-bid inquiries or clarification requests no later than **4:00 PM on March 1, 2016**. Pre-bid inquiries or clarification requests shall be submitted to: Linda Owens, only via email at LOWENS@ELCAMINO.EDU.

14. Copies of Agreement and Bonds. The number of required executed copies of the Agreement are THREE (3) The number of required executed copies of the Performance Bond and the Labor & Materials Payment are ONE (1).
  
15. Award of Contract; Waiver of Irregularities. The Contract, if awarded, will be by action of the District's Board of Trustees to the responsible Bidder submitting the lowest priced responsive Bid Proposal. If Alternate Bid Items are included in the bidding, the lowest priced Bid Proposal will be determined on the basis of the Base Bid Proposal or on the Base Bid Proposal and the combination of Alternate Bid Items selected in accordance with the above. The District reserves the right to reject any or all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.

Advertisement publication dates:

Wednesday, February 17, 2016

Wednesday, February 24, 2016

**[END OF SECTION]**

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## INSTRUCTIONS FOR BIDDERS

1. **Bid Proposal.** Bid Proposals not conforming to these Instructions for Bidders and the Notice to Contractors Calling for Bids (“Call for Bids”) may be deemed non-responsive and rejected.
  - 1.1. **Completion of Bid Proposal.** Where required, numbers shall be stated by words and figures; words; conflicts between numbers stated in words and in figures are governed by the words. Bid Proposals are non-responsive and will be rejected if: (i) partially completed; (ii) submitted on forms other than those required by the District; (iii) erasures, interlineations or other corrections are not suitably authenticated by the initials of the person(s) signing the Bid Proposal adjacent to such erasure, interlineations or correction; (iv) a Bid Proposal, or portions thereof, is/are determined by the District to be illegible, ambiguous or inconsistent.
  - 1.2. **Submittal.** Bid Proposals shall be submitted in sealed envelopes bearing on the outside the Bidder’s name and address along with an identification of the Work for which the Bid Proposal is submitted. A Bid Proposal is deemed submitted only if the outer envelope containing the Bid Proposal is stamped by the District’s date/time stamp machine at the location where Bid Proposals are to be submitted.
  - 1.3. **Withdrawal; Modification.** No oral modification or withdrawal of a submitted Bid Proposal will be considered; a written request to modify or withdraw a submitted Bid Proposal will be considered only if the written request is received by the District before the public opening of Bid Proposals.
2. **Bid Security.** Each Bid Proposal shall be accompanied by Bid Security in the form of: (i) cash; (ii) certified or cashier’s check payable to the District; or (iii) a Bid Bond, in the form and content incorporated into the Contract Documents (the “Bid Security”) in an amount not less than ten percent (10%) of the maximum amount of the Bid Proposal. Bid Bonds must conform to the following: (i) the Bid Bond is in the form and content included herein; and (ii) the Surety is an Admitted Surety Insurer under Code of Civil Procedure §995.120; (iii) authorized employees or representatives of the Bidder and Surety execute the Bid Bond and their signatures are duly notarized; (iv) the Surety’s representative’s authority to bind the Surety is attached to the Bid Bond and duly attested to by the Surety; and (v) all other information required by the form of the Bid Bond is completely and accurately provided.
3. **Erasures; Inconsistent or Illegible Bid Proposals.** Bid Proposals must not contain any erasures, interlineations or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure, interlineations or correction the initials of the person(s) signing the Bid Proposal. If a Bid Proposal, or portions thereof, are determined by the District to be illegible, ambiguous or inconsistent, whether by virtue of any erasures, interlineations, corrections or otherwise, the District may reject such a Bid Proposal as being non-responsive.
4. **Examination of Site and Contract Documents.** Each Bidder shall, at its sole cost and expense, inspect the Site and to become fully acquainted with the Contract Documents and conditions affecting the Work. The submission of a Bid Proposal is prima facie evidence of the Bidder’s full compliance with the foregoing requirements.
5. **Agreement and Bonds Upon Award of Contract.** If the Bidder submitting this Bid Proposal is awarded the Contract, the undersigned will execute and deliver to the District the Contract in the form attached hereto within five (5) calendar days after notification of award of the Contract. Concurrently with delivery of the executed Agreement to the District, the Bidder awarded the Contract shall deliver to the District: (a) Certificates of Insurance evidencing all insurance coverage required under the Contract Documents; (b) the Performance Bond; (c) the Labor and Material Payment Bond; (d) the Certificate of Workers’ Compensation Insurance; (e) the Drug-Free Workplace Certificate; (f) Fingerprint Certificates; and (g) Roof Project Financial Disclosure

Certificates, if required. Failure of the Bidder awarded the Contract to strictly comply with the preceding may result in the District's rescission of the award of the Contract and/or forfeiture of the Bidder's Bid Security. In such event, the District may, in its sole and exclusive discretion elect to award the Contract to the responsible Bidder submitting the next lowest Bid Proposal, or to reject all Bid Proposals. The required number of executed copies of the Agreement and the form and content of the Performance Bond and the Payment Bond and other documents or instruments required at the time of execution of the Agreement are specified in the Contract Documents.

6. Pre-Bid Questions; Contract Document Interpretation and Modifications. Any Bidder in doubt as to the true meaning of any part of the Contract Documents; finds discrepancies, errors or omissions therein; or finds variances in any of the Contract Documents with the Laws ("Pre-Bid Questions"), shall submit a request for an clarification, interpretation or correction thereof using the form of Pre-Bid Inquiry included with the Contract Documents. Bidders are solely and exclusively responsible for submitting Pre-Bid Questions no later than the time/date designated in the Call for Bids. Responses to Pre-Bid Questions will be by written addendum issued by, or on behalf of, the District. A copy of any such addendum will be mailed or otherwise delivered to each Bidder receiving a set of the Contract Documents. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein.
7. Interpretation of Drawings, Specifications or Contract Documents. Interpretations, modifications or corrections of the Contract Documents will be by written addendum issued by or on behalf of the District. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any Bidder, and no Bidder is authorized to rely on any such oral interpretation or correction.
8. Bidder's Assumptions. The District is not responsible for any assumptions made or used by the Bidder in calculating its Bid Proposal Amount including, without limitation, assumptions regarding costs of labor, materials, equipment or substitutions/alternatives for any material, equipment, product, item or system incorporated into or forming a part of the Work which have not been previously expressly approved and accepted by the District. The successful Bidder, upon award of the Contract by the District, if any, will be required to complete the Work for the amount bid in the Bid Proposal within the Contract Time and in accordance with the Contract Documents.
9. District's Right to Modify Contract Documents. Before the public opening and reading of Bid Proposals, the District may modify the Work, the Contract Documents, or portion(s) thereof by the issuance of written addenda disseminated to all Bidders who have obtained a copy of the Specifications, Drawings and Contract Documents pursuant to the Call for Bids. Failure of a Bidder to acknowledge addenda in its Bid Proposal will render the Bid Proposal non-responsive and rejected.
10. Bidders Interested in More Than One Bid Proposal; Non-Collusion Affidavit. No person, firm, corporation or other entity shall submit or be interested in more than one Bid Proposal for the same Work; provided, however, that a person, firm or corporation that has submitted a sub-proposal to a Bidder or who has quoted prices for materials to a Bidder is not thereby disqualified from submitting a sub-proposal, quoting prices to other Bidders or submitting a Bid Proposal for the proposed Work to the District. Failure of a Bidder to submit a completed and executed Non-Collusion Affidavit with its Bid Proposal will render the Bid Proposal non-responsive.



11. Award of Contract. The District reserves the right to reject any and all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding. Award of the Contract, if made by the District through action of its Board of Trustees, will be to the responsible Bidder submitting the lowest priced responsive Bid Proposal on the basis of the Base Bid Proposal or the Base Bid Proposal and Alternate Bid Items, if any, selected in accordance with these Instructions for Bidders.

11.1. Selection of Alternate Bid Items.

- The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive alternate items.**
- The lowest bid shall be the lowest total of the bid prices on the base contract and the following Alternates: \_\_\_\_\_.**
- The lowest bid shall be the lowest total of the bid prices on the base contract and the following additive or deductive alternate items that when taken in order, as prioritized, and added to, or subtracted from, the base contract, are less than, or equal to, the budget of \_\_\_\_\_ Dollars (\$\_\_\_\_\_): Alternates: \_\_\_\_\_.**
- The selection of Alternate Bid Items for inclusion in the scope of the Work of the Contract to be awarded and for determination of the lowest Bid Proposal based upon the Base Bid Proposal and the combination of Alternate Bid Items selected for inclusion in the Contract to be awarded will be by a blind-bidder process.** After opening timely submitted Bid Proposals and before the public reading of Bid Proposals, District clerical staff ("Clerical Staff") who will not be engaged in the selection of Alternate Bid Items for inclusion in the Contract to be awarded will assign each Bidder an alphabetical letter for identification purposes. The Clerical Staff will mask all portions of the Bid Proposal and other documents submitted with Bid Proposals so that the identity of each Bidder is not revealed. The Clerical Staff will maintain a list ("the Bidders List") which identifies by name and the alphabetical letter assigned by the Clerical Staff to each Bidder. After completing the Bidders List, the Clerical Staff will publicly read the Bid Proposals amounts of each Bidder for the Base Bid as well as each Alternate Bid Item. In this public reading of Bid Proposals, Bidders will not be identified by name; Bidders will be identified only by alphabetical letter assigned to each Bidder by the Clerical Staff. After the public reading of Bid Proposals, the Clerical Staff will provide the District's staff responsible for selection of Alternate Bid Items for inclusion in the Contract to be awarded ("District Project Staff") copies of Bid Proposals with the identities of Bidders masked; Bid Proposals reviewed by the District Project Staff will identify Bidders only by alphabetical letters. At such time as District Project Staff have completed review of Bid Proposals and made a determination of which Bidder (by the alphabetical letter assigned by Clerical Staff) has submitted the lowest priced Bid Proposal on the basis of the Base Bid Proposal and any combination of Alternate Bid Items as determined by the Architect and the District Project Staff, the Clerical Staff will make available to the Project Staff the Bidders List so that the identity of the Bidder to be awarded the Contract can be identified. Until such time as the District Project Staff have completed review of Bid Proposals and determination of which Bidder has submitted the lowest Bid Proposal, there will be no communication between the Clerical Staff and the Architect or the District Project Staff regarding the identities of Bidders or disclosure of any portion of the Bidders List. **The Bid Proposal of a Bidder will be rejected for non-responsiveness if the Bidder fails to submit the completed/executed Alternate Bid Items Proposal in a sealed**

**envelope separate from the Bid Proposal and other documents submitted with the Bid Proposal.**

- 11.2. Alternate Bid Items Not Included in Award of Contract. Bidders are referred to the provisions of the Contract Documents permitting the District, during performance of the Work, add or delete from the scope of the Work any or all of the Alternate Bid Items with the cost or credit of the same being the amount(s) set forth by the successful Bidder in its Alternate Bid Items Proposal.
- 11.3. Responsive Bid Proposal. A responsive Bid Proposal shall mean a Bid Proposal which conforms, in all material respects, to the Bid and Contract Documents.
- 11.4. Responsible Bidder. A responsible Bidder is a Bidder who has the capability in all respects, to perform fully the requirements of the Contract Documents and the moral and business integrity and reliability which will assure good faith performance. In determining responsibility, the following criteria will be considered: (i) the ability, capacity and skill of the Bidder to perform the Work of the Contract Documents; (ii) whether the Bidder can perform the Work promptly and within the time specified, without delay or interference; (iii) the character, integrity, reputation, judgment, experience and efficiency of the Bidder; (iv) the quality of performance of the Bidder on previous contracts, by way of example only, the following information will be considered: (a) the administrative, consultant or other cost overruns incurred by the District on previous contracts with the Bidder; (b) the Bidder's compliance record with contract general conditions on other projects; (c) the submittal by the Bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects; (d) the Bidder's record for completion of work within the contract time and the Bidder's compliance with the scheduling and coordination requirements on other projects; (e) the Bidder's demonstrated cooperation with the District and other contractors on previous contracts; (f) whether the work performed and materials furnished on previous contracts was in accordance with the Contract Documents; (v) the previous and existing compliance by the Bidder with laws and ordinances relating to contracts; (vi) the sufficiency of the financial resources and ability of the Bidder to perform the work of the Contract Documents; (vii) the quality, availability and adaptability of the goods or services to the particular use required; (viii) the ability of the Bidder to provide future maintenance and service for the warranty period of the Contract; (ix) whether the Bidder is in arrears on debt or contract or is a defaulter on any surety bond; (x) such other information as may be secured by the District having a bearing on the decision to award the Contract, to include without limitation the ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work of the Contract Documents and whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects. The ability of a Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder.
12. Subcontractors. Each Bidder shall submit a list of its Subcontractors for the Work as required by California Public Contract Code §§4100 et seq. on the form furnished. If a Bidder requires bonds of its Subcontractor(s), such requirements shall be specified in the Bidder's written or published request for sub-bids.
13. Workers' Compensation Insurance. Pursuant to California Labor Code §3700, the successful Bidder shall secure Workers' Compensation Insurance for its employees engaged in the Work of the Contract. The successful Bidder shall sign and deliver to the District the Certificate of Workers Compensation Insurance incorporated into the Contract Documents.
14. Bid Security Return. The Bid Security of the Bidders submitting the three (3) lowest priced

responsive Bid Proposals will be held by the District for ten (10) days after the period for which Bid Proposals must be held open, as set forth the Call for Bids, or until posting by the successful Bidder(s) of the bonds, certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the Bid Security of such other Bidders will be returned to them.

15. Forfeiture of Bid Security. If the Bidder awarded the Contract fails or refuses to execute the Agreement within five (5) calendar days from the date of receiving notification that it is the Bidder to whom the Contract has been awarded, the District may declare the Bidder's Bid Security forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next lowest priced Bid Proposal or may call for new bids, in its sole and exclusive discretion.
16. Contractor's License. No Bid Proposal will be considered from a Bidder who, at the time Bid Proposals are opened, is not licensed to perform the Work of the Contract Documents, in accordance with the Contractors' License Law, California Business & Professions Code §§7000 et seq. This requirement will not be waived by the District or its Board of Trustees.
17. Bidder's Qualifications. Each Bidder shall submit with its Bid Proposal the form of Statement of Qualifications, which is included within the Contract Documents. All information required by Statement of Qualifications shall be completely and fully provided. Any Bid Proposal not accompanied by the Statement of Qualifications completed with all information required and bearing the signature of the Bidder's duly authorized representative under penalty of perjury will render the Bid Proposal non-responsive and rejected. The Bid Proposal of a Bidder whose response to any question in the Essential Requirements section of the Statement of Qualifications resulted in a "Not Qualified" status will be rejected for non-responsiveness. If the District determines that any information provided by a Bidder in the Statement of Qualifications is false or misleading, or is incomplete so as to be false or misleading, the District may reject the Bid Proposal submitted by such Bidder as being non-responsive.
18. Job-Walk. The District will conduct a Job-Walk at the time(s) and place(s) designated in the Call for Bids. Attendance by representatives of the Bidder's Subcontractors at a Mandatory Job Walk without attendance by a representative of the Bidder is not sufficient to meet the Bidder's obligations hereunder and will render the Bid Proposal of such Bidder to be non-responsive. Notwithstanding the non-compulsory attendance of Bidders at a Non-Mandatory Job Walk, all Bidders are encouraged to attend Non-Mandatory Job Walks.
19. Public Records. Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. At such time as the District issues the Notice of Intent to award the Contract pursuant to these Instructions for Bidders, all Bid Proposals and other documents submitted in response to the Call for Bids become a matter of public record and shall be thereupon be considered public records, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1) confidential or proprietary. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. When Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals pursuant to the California Access to Public Records Act, California Government Code §§6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting

the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising there from. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

20. Drug Free Workplace Certificate. The successful Bidder will be required to execute a Drug Free Workplace Certificate pursuant to California Government Code §§8350 et seq., concurrently with execution of the Agreement.
21. Notice of Intent to Award Contract. Following the public opening and reading of Bid Proposals, the District will issue a Notice of Intent to Award the Contract, identifying the Bidder to whom the District intends to award the Contract and the date/time/place of the District's Board of Trustees meeting at which award of the Contract will be considered.
22. Bid Protest. Any Bidder submitting a Bid Proposal to the District may file a protest of the District's intent to award the Contract provided that each and all of the following are complied with: (i) the bid protest is in writing; (ii) the bid protest is filed and received by the District's Chief Business Officer, not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and (iii) the written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a bid protest is filed in strict conformity with the foregoing, the District's Chief Business Officer, or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the bid protest. Either the Chief Business Officer, or other individual designated by him/her shall provide the bidder submitting the bid protest with a written statement concurring with or denying the bid protest. The rendition of a written statement by the District's Chief Business Officer, (or his/her designee) is an express conditions precedent to the institution of any judicial proceedings relative to the bidding process, the District's intent to award the Contract, the District's disposition of any bid protest or the District's decision to reject all Bid Proposals. If any such judicial proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising there from.

**[END OF SECTION]**

**BID PROPOSAL**

**PROJECT: CCC-029 BOILER REPLACEMENT PROJECT (“the Work”)**

Bidder Name	_____	
Bidder Representative(s)	Name and Title _____	
	Name and Title _____	
Bidder Representative(s) Contact Information	Email _____	Phone/Fax _____
	_____	(_____) Telephone _____ (_____) Fax _____
Bidder Mailing Address	Address _____	
	City/State/Zip Code _____	
California Contractors' License	Number _____	
	Classification and Expiration Date _____	

1. Bid Proposal.

1.1. Bid Proposal Amount. The undersigned Bidder proposes to furnish all labor, materials, tools, equipment and services necessary to complete in accordance with the Contract Documents for the above-described Work, for the sum of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

The Bidder confirms that it has checked all of the above figures and understands that neither the District nor any of its agents, employees or representatives shall be responsible for any errors or omissions in this Bid Proposal.

1.2. Acknowledgment of Bid Addenda. The Bidder confirms that this Bid Proposal incorporates and is inclusive of, all items or other matters contained in Bid Addenda issued by or on behalf of the District. Received, acknowledged and incorporated into this Bid Proposal the following Addenda:

\_\_\_\_\_  
(List Addenda)

\_\_\_\_\_  
(Initials of Bidder's Representative)

1.3. Alternate Bid Items. If the bidding includes Alternate Bid Items, the Bidder's price proposal(s) for Alternate Bid Items is/are set forth in the form of Alternate Bid Item Proposal attached to this Bid Proposal. Price proposal(s) for Alternate Bid Item(s) will not form the basis for the District's award of the Contract unless an Alternate Bid Item is incorporated into the scope of Work of the Contract awarded.

2. DVBE Participation Goal.

2.1. DVBE Worksheets. The undersigned Bidder acknowledges that if it submitted one (1) of the three (3) lowest priced Bid Proposals for the Work (as reflected in the public opening and reading of Bid Proposals), the Bidder is required to submit DVBE Worksheets substantiating the Bidder's achievement of the DVBE Participation Goal or the Bidder's Good Faith Efforts to achieve the DVBE Participation Goal to the District not later than 5:00 PM the third (3<sup>rd</sup>)

working day after the date for opening of Bid Proposals. Failure of a Bidder submitting one (1) of the three (3) lowest priced Bid Proposals to timely submit completed and executed DVBE Worksheets will render the Bidder's Bid Proposal non-responsive and rejected.

2.2. Bidder's Achievement of DVBE Participation Goal. The Bidder acknowledges that the District has established a three percent (3%) Participation Goal for DVBEs in connection with the Work. The Bidder certifies to the District that the Bidder achieved the DVBE Participation Goal or the Bidder did not achieve the DVBE Participation Goal, but made Good Faith Efforts to achieve the DVBE Participation Goal, as noted by the checked box below.

- The Bidder achieved the DVBE Participation Goal.
- The Bidder did not achieve the DVBE Participation Goal, but made Good Faith Efforts to achieve the DVBE Participation Goal

3. Documents Accompanying Bid Proposal. The Bidder has submitted with this Bid Proposal the following: (i) Bid Security; (ii) Subcontractors List; (iii) Statement of Qualifications; (iv) Non-Collusion Affidavit; and (v) DIR Registration Verification. The Bidder acknowledges that if this Bid Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Call for Bids, the Instructions for Bidders and in each of the foregoing documents, the Bid Proposal may be rejected for non-responsiveness.
4. Award of Contract. Within five (5) days after notification of award of the Contract, the Bidder awarded the Contract shall execute and deliver to the District the Contract in the form attached hereto along with: (i) Certificates of Insurance evidencing all insurance coverages required under the Contract Documents; (ii) the Performance Bond; (iii) the Labor and Material Payment Bond; (iv) the Certificate of Workers' Compensation Insurance; and (v) the Drug-Free Workplace Certificate. Failure of the Bidder awarded the Contract to strictly comply with the preceding may result in the District's recession of the award of the Contract and/or forfeiture of the Bidder's Bid Security. In such event, the District may, in its sole and exclusive discretion elect to award the Contract to the responsible Bidder submitting the next lowest priced Bid Proposal, or to reject all Bid Proposals.
5. Contractors' License. The Bidder certifies that: (i) it is duly licensed, in the necessary class(es), for performing the Work of the Contract Documents, as designated by the District; (ii) that such license shall be in full force and effect throughout the duration of the performance of the Work under the Contract Documents; and (iii) that all Subcontractors providing or performing any portion of the Work are and shall remain properly licensed to perform or provide such portion of the Work.
6. Agreement to Bidding Requirements and Attorneys' fees. The undersigned Bidder acknowledges and confirms its receipt, review and agreement with, the contractual requirements set forth in this Bid Proposal and the Contract Documents. By executing this Bid Proposal hereinbelow, the Bidder expressly acknowledges and agrees that if the Bidder institutes any legal or equitable proceedings in connection with this Bid Proposal and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys' fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom. This provision shall constitute a binding attorneys' fee agreement in accordance with and pursuant to California Civil Code §1717 which shall be enforceable against the Bidder and the District. This attorney fee provision shall be solely limited to legal or equitable proceedings arising out of a bid protest or the bidding process and shall not extend to or have any force and effect on the Contract for the Work or to modify the terms of the Contract Documents for the Work.
7. Acknowledgment and Confirmation. The undersigned Bidder acknowledges its receipt, review and understanding of the Drawings, the Specifications and other Contract Documents pertaining

to the proposed Work. By submitting this Bid Proposal, the undersigned Bidder certifies that the Contract Documents are, in its opinion, adequate, feasible, accurate and complete for the Bidder to complete the Work in a workmanlike manner within the Contract Time and for the price proposed herein. The undersigned Bidder warrants and represents to the District that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to complete the Work for the amount bid herein, within the Contract Time and in accordance with the Contract Documents.

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

By: \_\_\_\_\_  
(Signature of Bidder's Authorized Officer or Representative)

\_\_\_\_\_  
(Typed or Printed Name)

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

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**ALTERNATE BID ITEMS PROPOSAL**

**CCC-029 BOILER REPLACEMENT PROJECT**

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

Bidders must provide a proposal price for each Alternate Bid Item set forth herein; failure to do so will result in rejection of the Bid Proposal for non-responsiveness. The amount proposed for each Alternate Bid Item by the above-identified Bidder is set forth hereinbelow:

**Alternate Bid Item No. 1. [DESCRIPTION]**

Check one of the following and indicate the additive or deductive proposed price for the foregoing Alternate Bid Item.

- Add \_\_\_\_\_ Dollars (\$) to Base Bid Proposal Amount.
- Deduct \_\_\_\_\_ Dollars (\$) from Base Bid Proposal Amount.

**Alternate Bid Item No. 2. [DESCRIPTION]**

Check one of the following and indicate the additive or deductive proposed price for the foregoing Alternate Bid Item.

- Add \_\_\_\_\_ Dollars (\$) to Base Bid Proposal Amount.
- Deduct \_\_\_\_\_ Dollars (\$) from Base Bid Proposal Amount.

Dated \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Bidder's Authorized Officer or Representative)

\_\_\_\_\_  
(Typed or Printed Name)

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

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**PRE-BID INQUIRY FORM**

**Project: CCC-029 BOILER REPLACEMENT PROJECT**  
**Submittal Date** \_\_\_\_\_

Bidder inquiries will be responded to only if: (i) submitted on this Pre-Bid Inquiry Form; (ii) this completed Pre-Bid Inquiry Form is submitted prior to the latest date/time for submittal of pre-bid inquiries as set forth in the Call for Bids; and (ii) this completed Pre-Bid Inquiry Form is submitted via email to the person or entity noted in the Call for Bids.

Item No.	Item Description	Drawing Sheet No. & Detail No. Reference	Specifications Section and Paragraph No. Reference

**Submitted By:**

\_\_\_\_\_

(Bidder Name)

\_\_\_\_\_  
(Signature of Bidder's Authorized Employee, Officer or Representative)

**Bidder Contact Information:**

\_\_\_\_\_

(Bidder Contact Name)

\_\_\_\_\_

(Phone and Fax)

\_\_\_\_\_

(Email Address)

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**SUBCONTRACTORS LIST**

<b>Project ("the Work")</b>	<b>CCC-029 BOILER REPLACEMENT PROJECT</b>
<b>Bidder Name</b>	_____
<b>Bidder's Representative Signature</b>	_____ (Signature)
	_____ (Typed or Printed Name)

<b>Licensed Name of Subcontractor</b>	<b>Address of Office, Mill or Shop</b>	<b>Contractor's License Number</b>	<b>Trade or Portion of Work</b>

[DUPLICATE THIS FORM FOR ADDITIONAL SUBCONTRACTORS]

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**VERIFICATION OF CONTRACTOR AND SUBCONTRACTORS' DIR REGISTRATION**

I am the \_\_\_\_\_ of \_\_\_\_\_ ("Bidder")  
(Title/Position) (Bidder Name)  
submitting the accompanying Bid Proposal for the Work described as **CCC-029 BOILER REPLACEMENT PROJECT**.

1. The Bidder is currently registered as a contractor with the Department of Industrial Relations ("DIR").
2. The Bidder's DIR Registration Number is: \_\_\_\_\_. The expiration date of the Bidder's DIR Registration is \_\_\_\_\_, 20\_\_.
3. If the expiration date of the Bidder's DIR Registration will occur prior to expiration of the Contract Time for the Work and the Bidder is awarded the Contract for the Work, prior to the Bidder's DIR Registration expiration, the Bidder will take all measures necessary to renew the Bidder's DIR Registration so that there is no lapse in the Bidder's DIR Registration.
4. The Bidder, if awarded the Contract for the Work will remain a DIR registered contractor for the entire duration of the Work.
5. The Bidder has independently verified that each Subcontractor identified in the Subcontractors List is a DIR registered contractor.
6. The Bidder's solicitation of Subcontractor bids included notice to prospective Subcontractors that: (i) all sub-tier subcontractors must be DIR registered contractors at all times during performance of the Work; and (ii) prospective subcontractors may only solicit sub-bids from and contract with lower-tier subcontractors who are DIR registered contractors.
7. If any of the statements herein are false or omit material facts rendering a statement to be false or misleading, the Bidder's Bid Proposal is subject to rejection for non-responsiveness.
8. I have personal first hand-knowledge of all of the foregoing.

I declare under penalty of perjury under California law that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name, typed or printed)

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**STATEMENT OF QUALIFICATIONS**

**1. Bidder Information.**

**1.1. Contact Information**

Mailing Address	_____ Street Address _____ City, State, Zip Code
Physical Location (if different from mailing address)	_____ Street Address _____ City, State, Zip Code
Telephone/Fax	(_____) _____ Telephone (_____) _____ Fax

**1.2. Bidder Contacts.**

Name	_____
Contact Information	Telephone: (_____) _____ Fax (_____) _____ Email _____

**1.3. California Contractors' License.**

License Number(s)	_____
License Classification(s)	_____
Responsible Managing Employee; Responsible Managing Officer	_____
Expiration Date(s)	_____

**1.4. Bidder Form of Entity.**

- |  |  |
|--|--|
| <input type="checkbox"/> Corporation               | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> General Partnership       | <input type="checkbox"/> Joint Venture                 |
| <input type="checkbox"/> Limited Partnership       | <input type="checkbox"/> Sole Proprietorship           |
| <input type="checkbox"/> Limited Liability Company |  |

**[CONTINUED NEXT PAGE]**

2. Revenue. Complete the following for the Applicant’s construction operations; if any portion of the revenue disclosed is generated by non-construction operations or activities, the Applicant must identify the portion of revenue attributed to construction operations and generally describe business activities of the Applicant that generates non-construction operations related revenue.

<b>Calendar Year/ Fiscal Year</b>	<b>Annual Gross Revenue</b>	<b>Average Dollar Value of all Contracts</b>	<b>Dollar Value of Largest Contract</b>
2013 (2012/2013)			
2014 (2013/2014)			
2015 (2014/2015)			

3. References.

<b>DSA Project Inspectors</b>			
<b>Firm Name</b>	<b>Address</b>	<b>Telephone No.</b>	<b>Contact Name</b>
<b>Owners (K-12 school districts or community colleges preferred)</b>			
<b>Owner Name</b>	<b>Address</b>	<b>Telephone No.</b>	<b>Contact Name</b>
<b>Architects (K-12 or Community College Projects)</b>			
<b>Architect Firm Name &amp; Architect Firm Contact Name</b>	<b>Address</b>	<b>Telephone No.</b>	<b>Contact Name</b>

**[CONTINUED NEXT PAGE]**

4. Insurance.

<p>Commercial General Liability Insurance</p>	<p>Insurer: _____                  Policy No. _____                  Broker _____</p>
<p>Commercial General Liability Insurance Broker</p>	<p>(Contact Name) _____                  _____                  (Street Address)                  _____                  (City, State &amp; Zip Code)                  _____                  (_____) _____ (_____) _____                  Telephone Fax                  _____                  (Email address)</p>
<p>Bid, Performance and Labor &amp; Materials Payment Bond Surety</p>	<p>Surety: _____                  Surety Broker _____                  _____                  (Surety Broker Contact Name)                  _____                  (Street Address)                  _____                  (City, State &amp; Zip Code)                  _____                  (_____) _____ (_____) _____                  Telephone Fax                  _____                  (Email address)</p>
<p>Workers Compensation Insurance</p>	<p>Insurer: _____                  Policy No. _____                  Broker _____</p>
<p>Workers Compensation Insurance Broker</p>	<p>(Contact Name) _____                  _____                  (Street Address)                  _____                  (City, State &amp; Zip Code)                  _____                  (_____) _____ (_____) _____                  Telephone Fax                  _____                  (Email address)</p>

[CONTINUED NEXT PAGE]

5. Essential Requirements. A Bidder will not be deemed qualified if the answer to any of the following questions results in a “not qualified” response and the Bid Proposal submitted by such a Bidder will be rejected for non-responsiveness.

5.1. Bidder possesses a valid and currently in good standing California Contractors’ license for the Classification(s) of Contractors’ License required by the Call for Bids.

Yes  No (Not Qualified)

5.2. The Bidder is a DIR Registered Contractor.

Yes  No (Not Qualified)

5.3. Bidder has a current commercial general liability insurance policy with coverage limits which are equal to or exceed the minimum coverage limit required by the Contract Documents.

Yes  No (Not Qualified)

5.4. Bidder has a current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code § 3700.

Yes  No (Not Qualified)

Bidder is exempt from this requirement, because it has no employees

5.5. Certificates of Insurance evidencing the Bidder’s current commercial general liability insurance policy and workers compensation insurance are attached to the response to this Qualifications Statement.

Commercial General Liability Certificate of Insurance

Yes  No (Not Qualified)

Workers Compensation Certificate of Insurance

Yes  No (Not Qualified)

No, Applicant is exempt from this requirement, because it has no employees

5.6. Is the Bidder ineligible or debarred from submitting Bid Proposals for public works projects or public works contracts pursuant Labor Code §1777.1 or Labor Code §1777.7?

Yes (Not Qualified)  No

5.7. Has any public agency, within the past five (5) years conducted proceedings that resulted in a finding that the Bidder, or any predecessor to the Bidder, is not a “responsible” bidder for a public works project or a public works contract?

Yes (Not Qualified)  No

5.8. At any time during the last five (5) years, has the Bidder or any predecessor to the Bidder, or any of the equity owners of the Bidder been convicted of a federal or state crime involving fraud, theft, or any other act of dishonesty?

Yes (Not Qualified)  No

5.9. At any time during the past five (5) years has a Surety completed any project or the Bidder's obligations under a construction contract?

Yes (Not Qualified)  No

5.10. At any time during the past five (5) years has the Bidder been declared in default under any construction contract to which the Bidder was a party?

Yes (Not Qualified)  No

5.11. Is the Bidder's Worker's Compensation Insurance average Experience Modification Rating ("EMR") rating over the past five (5) years more than 1.5?

Yes (Not Qualified)  No

6. Accuracy and Authority. The undersigned is duly authorized to execute this Statement of Qualifications under penalty of perjury on behalf of the above-identified Bidder. The undersigned warrants and represents that he/she has personal knowledge of each of the responses to this Statement of Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of Qualifications. The undersigned declares and certifies that the responses to this Statement of Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses. The above-identified Bidder acknowledges and agrees that if the District determines that any response herein is false or misleading or contains misstatements of fact so as to be false or misleading, the Bidder's Bid Proposal may be rejected by the District for non-responsiveness.

Executed this \_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

By: \_\_\_\_\_  
(Signature of Bidder's Authorized Officer or Representative)

\_\_\_\_\_  
(Typed or Printed Name)

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

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**NON-COLLUSION AFFIDAVIT**

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_)

**PROJECT: CCC-029 BOILER REPLACEMENT PROJECT**

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am the  
(Typed or Printed Name)  
\_\_\_\_\_ of \_\_\_\_\_, the party submitting  
(Title) (Bidder Name)  
the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the undersigned declares, states and certifies that:

The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.

The Bid Proposal is genuine and not collusive or sham.

The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in sham bid, or to refrain from bidding.

The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.

All statements contained in the Bid Proposal and related documents are true.

The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.  
(City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Bidder's Authorized Officer or Representative)

\_\_\_\_\_  
(Typed or Printed Name)

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

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**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**

I, \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Title) (Contractor Name), declare state and certify that:

I am aware that California Labor Code §3700(a) and (b) provides:

“Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.”

I am aware that the provisions of California Labor Code §3700 require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this Contract.

I am authorized to execute this Certificate of Workers Compensation Insurance on behalf of the above-identified Contractor.

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

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

\_\_\_\_\_  
(Name Printed or Typed)

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

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**DRUG-FREE WORKPLACE CERTIFICATION**

I, \_\_\_\_\_, am the \_\_\_\_\_ of \_\_\_\_\_  
 (Print Name) (Title) (Contractor Name)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
  - 2.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition.
  - 2.2. Establishing a drug-free awareness program to inform employees about all of the following: (i) the dangers of drug abuse in the workplace; (ii) Contractor's policy of maintaining a drug-free workplace; (iii) the availability of drug counseling, rehabilitation and employee-assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations.
  - 2.3. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by Paragraph 2.1 above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
3. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (i) the prohibition of any controlled substance in the workplace, (ii) establishing a drug-free awareness program, and (iii) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
4. Contractor and I understand that if the District determines that Contractor has either: (i) made a false certification herein, or (ii) violated this certification by failing to carry out and to implement the requirements of California Government Code §§8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.
5. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ at

\_\_\_\_\_  
 (City and State)

By: \_\_\_\_\_  
 (Signature of Bidder's Authorized Officer or Representative)

\_\_\_\_\_  
 (Typed or Printed Name)

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

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**DISABLED VETERAN BUSINESS ENTERPRISE (“DVBE”)  
PARTICIPATION GOAL PROGRAM POLICY**

1. DVBE Participation Goal Program Policy. WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT (“the District”) is committed to achieving the legislatively and administratively established Participation Goal for Disabled Business Enterprises (“DVBEs”). Through the DVBE Participation Goal Program, the District encourages contractors to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract. The District’s commitment to the achievement of DVBE Participation Goal for the Work of the Contract shall not, however, result in the District’s discrimination in the award of the Contract on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disability.
2. Definitions.
  - 2.1. Disabled Veteran. A “Disabled Veteran” means a veteran of the military, naval, or air service of the United States with at least ten percent (10%) service-connected disability who is a resident of the State of California.
  - 2.2. Disabled Veteran Business Enterprise. A “Disabled Veteran Business Enterprise” (“DVBE”) means a business enterprise certified by the Office of Small and Minority Business, State of California, Department of General Services, as a “Disabled Veteran Business Enterprise.”
  - 2.3. Good Faith Efforts. As use herein, the term “Good Faith Efforts” shall be deemed to mean demonstrable and effective efforts of the Bidder to seek out, consider and secure DVBEs as potential Subcontractors or Material Suppliers, or both, in order to meet the Participation Goal; the Good Faith Efforts must be an active and aggressive effort to meet the Participation Goal, as more particularly set forth herein.
3. Participation Goal.
  - 3.1. Participation Goal Defined. The term “Participation Goal” is a numerically expressed objective for DVBE participation in performing the Work of the Contract. The DVBE Participation Goal is not a quota, set-aside, or rigid proportion.
  - 3.2. DVBE Participation Goal. The DVBE Participation Goal is Three Percent (3%) of total amount of Bidder’s Bid Proposal, inclusive of the value of additive Alternate Bid Items, if any.
4. Good Faith Efforts to Meet Participation Goal.
  - 4.1. Good Faith Efforts. The Bid Proposal submitted by any Bidder who has not met the DVBE Participation Goal shall be considered responsive only if the Bidder represents that it made Good Faith Efforts to meet the DVBE Participation Goal.
  - 4.2. Good Faith Efforts to Meet DVBE Participation Goal. A Bidder must secure the participation of DVBEs in a timely manner to ensure that potential DVBE Subcontractors or Material Suppliers have an adequate opportunity to respond to the Bidder’s solicitation of sub-bids and be given serious consideration by the Bidder prior to the closing time for the receipt of Bid Proposals. Such Good Faith Efforts shall include, without limitation:
    - 4.2.1. DVBE Work and Active Solicitation of DVBEs. The Bidder’s identification of portions of the Work which may be provided or performed by DVBE Subcontractors and/or Material Suppliers and the Bidder’s active and sincere solicitation of DVBEs for those identified portions of the Work.
    - 4.2.2. Contact Agencies for DVBEs. Contact local, state and/or federal agencies, and local DVBE organizations to identify potential DVBEs for performing portions of the Work;
    - 4.2.3. Advertisements. Advertise (with sufficient time for submission of sub-bids and the Bidder’s good faith consideration of the same) prior to the last date for submittal of Bid Proposals in: (i) one or more daily or weekly newspapers of general circulation published in the locality of the Work, and (ii) one or more construction trade publications, and (iii) one or more construction trade publications, journals or papers focusing on

DVBES. Each of the advertisements pursuant to the preceding, must state the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of sub-bids from DVBEs to the Bidder; (iv) request sub-bids from DVBE Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds, if any, of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.

- 4.2.4. Direct Solicitation of DVBEs. Solicit by direct mail, telephone or personal contact a sufficient number of DVBEs who offer work or services appropriate for the Work identified by the Bidder under Paragraph 4.2.1 above. Solicitations shall be made in a timely manner and contain sufficient information for a sub-Bidder to make a reasonable sub-bid and the Bidder's good faith consideration of the same, including, without limitation, the following: (i) identification of the general description of the Work and an identification of the District; (ii) state the closing date and time for the District's receipt of Bid Proposals; (iii) state the last date and time for submission of bids from DVBEs to the Bidder; (iv) request sub-bids from Subcontractors or Material Suppliers; (v) identify the type of Work of the Contract available for sub-bids by DVBEs; and (vi) unequivocally state the requirement of bonds of a DVBE sub-Bidder and who is to bear the expense of obtaining any required bonds.
- 4.2.5. Bidder Follow-Up To DVBE Interest. The Bidder shall follow-up initial expressions of interest of DVBEs in performing a portion of the Work by contacting such DVBEs to determine with certainty whether such DVBEs are interested in performing specific items of the Work of the Contract and submitting a sub-bid for a portion of the Work.
- 4.2.6. Good Faith Negotiations With Potential DVBE Subcontractors. The Bidder shall negotiate in good faith with potential DVBEs Subcontractors or Material Suppliers and shall not unjustifiably reject, as unsatisfactory, bids prepared by any DVBE for a portion of the Work of the Project. In the event that the District shall reasonably determine that the Bidder has failed to engage in good faith negotiations with a potential DVBE participant or rejects the sub-bid of a DVBE without justification, the District may deem the Bid Proposal of such Bidder to be non-responsive.

5. Documentation of Achievement of Participation Goal or Good Faith Efforts. Each Bidder shall note, where indicated, in the form of Bid Proposal whether the DVBE Participation Goal was achieved and if not, that Good Faith Efforts were made to achieve the DVBE Participation Goal. **The Bidders submitting the three lowest priced Bid Proposals (as determined at the time of the District's public opening and reading of Bid Proposals), shall submit to the District documentation and supporting evidence of achievement of the DVBE Participation Goal or Good Faith efforts to achieve the DVBE Participation Goal.** Such documentation and supporting evidence shall be in the form of duly completed forms of the DVBE Participation Worksheets issued by the District; unless modified by the District, completed DVBE Worksheets must be submitted to the District Purchasing Department no later than 5:00 p.m. of the third (3<sup>rd</sup>) working day after the date of the opening of Bid Proposals. The District may, at its discretion, request that Bidders, other than the Bidders submitting the three lowest priced Bid Proposals, submit documentation of compliance with the DVBE Participation Goal Program at any time after the District's opening of Bid Proposals and prior to the District's award of the Contract. **If a Bidder is required or requested by the District to submit DVBE Participation Goal Program documentation, the failure of any Bidder to timely submit complete and accurate documentation on DVBE Participation Worksheets issued by the District at or prior to the time established herein will render the Bidder's Bid Proposal non-responsive and rejected.**

6. Counting of DVBE Participation.

- 6.1. Certification. DVBEs must be certified in the category identified prior to the closing time for the District's receipt of Bid Proposals; any DVBE who is not so certified will result in such DVBE not counting towards the DVBE Participation Goal.
  - 6.2. Bidder Acceptance of Sub-Bid. Sub-bids of DVBEs shall be accepted by the Bidder prior to the closing time for the District's receipt of Bid Proposals, with such acceptance subject only to the District's award of the Contract to the Bidder.
  - 6.3. Value of Participation Goal. The total dollar value of a contract between the Bidder and a certified DVBE will count towards the DVBE Participation Goal.
  - 6.4. Joint Ventures. If a DVBE is a member of a joint venture, only the dollar value of the Work actually performed by the DVBE member of the joint venture will count towards the DVBE Participation Goal, unless the joint venture entity itself is certified as a DVBE.
  - 6.5. Bidder as DVBE. A Bidder certified as a DVBE may count towards the Participation Goal the dollar value of the Work actually performed by the Bidder's own forces. A Bidder certified as a DVBE is not relieved from meeting the DVBE Participation Goal or making Good Faith Efforts to achieve the Participation Goal if the value of its Work is less than the DVBE Participation Goal.
  - 6.6. Lower Tier Subcontractors; Material Suppliers. The Bidder may count towards the DVBE Participation Goal the total dollar value of contracts let by its Subcontractors or Material Suppliers to lower tier Subcontractors or Material Suppliers certified as DVBEs provided that such lower tier Subcontractors or Material Suppliers actually assume the contractual responsibility and obligation for the total dollar value of the Work or materials to be supplied by such lower tier Subcontractors or Material Suppliers.
  - 6.7. Commercially Useful Functions. DVBEs used by the Bidder to establish achievement of the Participation Goal shall be considered as meeting the Participation Goal only if the DVBE is responsible for execution of a distinct element of the Work of the Contract, carry out its obligations by actually performing, managing, or supervising the Work for which the DVBE is responsible for executing. Such DVBEs must be responsible for the portion of the Work which is normal for its business services and functions. A DVBE Subcontractor who subcontracts a significantly greater portion of the Work assumed by the DVBE Subcontractor than would be considered normal and usual under industry standards and practices will not be presumed to be performing a commercially useful function, and such DVBE Subcontractor will not count or be considered for purposes of achieving the Participation Goal.
7. Substitution of DVBEs. In the event that Bidder awarded the Contract deems it necessary to substitute a DVBE Subcontractor or Material Supplier identified in the Subcontractor's List submitted with the Bidder's Bid Proposal, all provisions of the Contract Documents relating to the substitution of Subcontractors shall be applicable and complied with by the successful Bidder. In addition to the provisions of the Contract Documents relating to the substitution of listed Subcontractors, if a DVBE under a direct contract with the Bidder is to be substituted, the successful Bidder is strongly encouraged to substitute the listed DVBE with an equivalent and certified DVBE.
8. Monitoring of DVBE Participation.
    - 8.1. DVBE Participation Worksheets. If the Bidder awarded the Contract is required by the District to complete and submit DVBE Participation Worksheets, the completed forms of DVBE Participation Worksheets submitted by the Bidder shall be deemed a part of the Contract Documents.
    - 8.2. Continuing Responsibilities. Efforts of the successful Bidder to include the participation of DVBEs in the performance of the Work of the Contract shall not terminate with the award of the Contract to such Bidder. The successful Bidder's efforts to secure the participation of DVBEs shall continue for the duration of the Work of the Contract, including when the

successful Bidder is purchasing materials, equipment, supplies, and/or needs additional Subcontractors (including substitution of listed Subcontractors).

- 8.3. DVBE Participation Reports and Data. During performance of the Work of the Contract, the successful Bidder shall maintain complete and accurate records of DVBE Participation in executing the Work. From time-to-time, upon the request of the District the Bidder awarded the Contract shall submit reports, in form and content satisfactory to the District, regarding DVBE Participation in the Work of the Contract, including the participation of DVBEs in the performance of approved Changes to the Work. The failure or refusal of the successful Bidder to submit reports of DVBE Participation during performance of the Work within ten (10) days of the District's request for such reports may be deemed by the District to be the successful Bidder's default of a material obligation of the Contract and thereupon, the District may exercise any right or remedy provided for under the Contract Documents or at law, including without limitation termination of the Contract for default or the withholding of payments otherwise due under the Contract Documents until such report(s) is/are received. If requested by the District, upon completion of the Work of the Contract, the successful Bidder shall submit a final report identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each such DVBE and the dollar value of the Work performed by each such DVBE. In the event that the District shall request a report of DVBE utilization upon completion of the Work of the Contract, the submission of such report in form and content satisfactory to the District shall be deemed a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. In such event, the submission of such final report shall be in addition to, and not in lieu of any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment. The Bidder awarded the Contract shall maintain books and records of DVBE Participation in the Work for at least three (3) years following completion of the Project; during such time, the District shall have access, upon reasonable advance notice, to such books and records for inspection or reproduction.
- 8.4. Contract Audit. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have the right to review, obtain and/or copy any and all writings, materials, documents and other records pertaining to utilization of DVBEs in performance of the Contract. The successful Bidder awarded the Contract agrees that the District, or its designee, shall have access to any of the successful Bidder's premises upon reasonable notice, during usual business hours for the purpose of interviewing employees and inspecting and/or copying such writings, materials, documents and other documents which may be relevant to a matter under investigation for the purpose of determining compliance with the DVBE Participation Goal Program Policy.
9. Capitalized Terms. Capitalized terms used herein shall be as defined herein or elsewhere in the Contract Documents.

**[END OF SECTION]**



**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT A  
BIDDER'S DVBE STATEMENT**

**1. General Information.**

1.1. Bidder Name: \_\_\_\_\_.

1.2. Total Amount of Bidder's Bid Proposal (inclusive of additive Alternate Bid Items, if any):  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**2. Bidder's Compliance With DVBE Participation Program.** (Check the appropriate statement).

- The Bidder has achieved or exceeded the DVBE Participation Goal and all DVBEs counting towards the DVBE Participation Goal are set forth and identified in DVBE Attachments C-1, C-2 and C-3.
- The Bidder did not achieve the Participation Goal for DVBEs, but has made the required Good Faith Efforts to secure the participation of DVBEs in accordance with guidelines established in the District's DVBE Participation Goal Program.

**3. DVBE Participation Achieved.** The Bidder achieved a DVBE Participation Goal of \_\_\_\_% of the amount of the Bidder's Bid Proposal.**4. Submittal of Documentation.** Concurrently with the submittal of this Bidder's DVBE Statement, the Bidder has also submitted duly completed, and executed if required, forms of DVBE Attachments B, C, D, E, F, G and H of these DVBE Participation Worksheets to the extent required by the District's DVBE Participation Goal Program Policy. All of the information provided by the Bidder in its responses to DVBE Attachments B, C, E, F, G and H are true, correct and accurate; there are no omissions in the responses of the Bidder to the foregoing Attachments which render any of the Bidder's statements or information provided therein to be false or misleading. Incomplete, inaccurate, false, misleading responses or omissions rendering responses to be false or misleading will render the Bid Proposal non-responsive and rejected.**5. Certification of DVBE Status.** The Bidder certifies, warrants and represents to the District that the Bidder has exercised due diligence in ascertaining the status of each proposed DVBE identified in DVBE Attachment C as a DVBE in compliance with the applicable provisions of the District's DVBE Participation Program Policy and applicable law. By executing and submitting this Bidder's DVBE Statement, the Bidder represents to the District that each DVBE identified in DVBE Attachment C is duly and properly certified as a DVBE in conformity with the District's DVBE Program Goal Policy and applicable law. The Bidder acknowledges that in the event that the District shall reasonably determine that any DVBE identified in the Bidder's responses to DVBE Attachment C is not a duly and properly certified DVBE, the Bid Proposal may be rejected by the District as being non-responsive. For each DVBE identified in DVBE Attachment C, the Bidder has submitted forms of DVBE Certification (DVBE Attachment D) duly completed and executed by each such DVBE.

**[CONTINUED ON NEXT PAGE]**

**6. Authority to Execute.** The individual executing this Bidder's DVBE Statement on behalf of the Bidder warrants and represents to the District that she/he is duly authorized to execute this Bidder's DVBE Statement on behalf of the Bidder.

Executed this \_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Individual Executing Statement)  
[Printed or Typed]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT B  
SUBCONTRACTIBLE ITEMS OF WORK**

**Bidder Name:** \_\_\_\_\_

List each item of Work, including supplies, equipment, services, and trucking made available to DVBEs. Also list the approximate dollar value and approximate percentage of the Bidder's total Bid Proposal amount that each item of Work identified below represents. (Photocopy if additional sheets are needed.)

<b>Item or Description of Work</b>	<b>Approximate Dollar Value</b>	<b>Approximate Percentage of Total Amount of Bid Proposal</b>

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**INSTRUCTIONS FOR COMPLETION OF  
ATTACHMENT C  
DVBE PARTICIPATION SUMMARY**

1. **Submittal of Attachment C.** The Bidder shall complete and submit Attachment C regardless of whether or not such Bidder has achieved some or all of the Participation Goal. Failure of the Bidder to submit completed form of Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being non-responsive.
2. **Firm Name.** State name of the enterprise proposed by the Bidder for meeting DVBE Participation Goal; the full name of each enterprise identified must be listed and if the enterprise conducts business under a fictitious business name, the same shall be stated. If the Bidder is a certified DVBE and wishes to be counted in the category certified for purposes of meeting the Participation Goal, the Bidder must be identified in Attachment C.
3. **Item or Description of Work.** Identify, with specificity, the item or portion of the Work of the Contract to be provided or performed by the proposed DVBEs identified.
4. **Contracting With.** Identify the name of the company or firm with whom the proposed DVBE will be contracting with in connection with the Work of the Contract.
5. **Tier.** Identify the tier of contracting for each proposed DVBE with the following designations:
  - 0 = Bidder.
  - 1 = First Tier Subcontractor or Material Supplier under a direct contract with the Bidder.
  - 2 = Second Tier Subcontractor or Material Supplier under a direct contract with a First Tier Subcontractor or Material Supplier, regardless of whether or not the First Tier Subcontractor or Material Supplier is a DVBE.
  - 3 = Third Tier Subcontractor or Material Supplier under a direct contract with a Second Tier Subcontractor or Material Supplier, regardless of whether or not the Second Tier Subcontractor or Material Supplier is a DVBE.
6. **Claimed Value.** Set forth the total dollar value of the Work to be provided or performed by the proposed DVBE. The dollar value set forth in the responses to Attachments C must conform with the applicable provisions of the District's DVBE Participation Program Goal Policy.
7. **Certification.** For each DVBE identified in Attachment C, the Bidder shall indicate in this column whether such DVBE is self-certified or certified by a public agency as a DVBE. The Bidder's completion of this portion of Attachment C with respect to each DVBE identified therein is in addition to and not in lieu of the Bidder's submittal of duly completed and executed forms of DVBE Certification (Attachment D) from each proposed DVBE identified in Attachment C.

**[END OF SECTION]**

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**DVBE PARTICIPATION WORKSHEETS  
INSTRUCTIONS FOR COMPLETION OF ATTACHMENT D  
DVBE CERTIFICATION**

- 1. DVBEs Completion of Attachment D.** The Bidder submitting a Bid Proposal to the District shall make available to each DVBE identified by the Bidder in its responses to Attachment C a copy of the DVBE Certification (Attachment D) for completion and execution by each such DVBE.
- 2. Bidder Submittal of Completed Attachment D.** The Bidder required by the DVBE Participation Goal Program Policy to submit documentation of compliance with the DVBE Participation Goal Program shall submit duly completed and executed forms of the DVBE Certification of each DVBE identified in the Bidder's responses to Attachment C. The failure or refusal, for any reason, of the Bidder to submit such completed and executed DVBE Certification(s) of each DVBE identified in the Bidder's responses to Attachment C as and when required by the DVBE Participation Goal Program Policy will result in the District rejecting the Bid Proposal of such Bidder as being nonresponsive.
- 3. Complete and Accurate Attachment D.** Each DVBE identified in the Bidder's responses to Attachment C shall complete and execute, under penalty of perjury, a DVBE Certification. Each such DVBE and the Bidder acknowledge that if the District reasonably determines that any response in the DVBE Certification(s) submitted to the District which are incomplete, false or misleading or which omit facts rendering responses therein to be false or misleading, the District may reject the Bid Proposal of such Bidder as being non-responsive.

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT D  
DVBE CERTIFICATION**

**Bidder:** \_\_\_\_\_

**1. DVBE Information.**

DVBE Firm Name	
DVBE Address	
DVBE Firm Contact Name	
DVBE Firm Contact Phone, Fax and Email	
Services or Goods Generally Provided by DVBE	
Services or Goods to be Provided by DVBE to Bidder	

**2. Certification of DVBE Status.** The above-identified DVBE is certified as such by California Department of General Services Office of Small Business and Disabled Veteran Business Enterprise Services and a true and correct copy of such certification is attached hereto. The Bidder and the above-identified DVBE acknowledge that if the certification of the above-identified DVBE's status is not attached, the above-identified DVBE will not be counted or considered for purposes of the Bidder's achievement of the Participation Goal.

**3. Authority to Execute.** The undersigned individual executing this DVBE Certification warrants and represents to the District that she/he has made diligent inquiry to ascertain that all of the information provided herein is true, correct and complete, that there are no omissions of fact in any of the responses herein which would render such responses false or misleading and that she/he is duly authorized to execute this DVBE Certification on behalf of the above-identified DVBE.

Executed \_\_\_\_\_ this \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Name of Individual Executing DVBE Certification)  
[Printed or Typed]

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT E  
DVBEs CONTACTED**

For each Subcontractible Item of the Work identified in the Bidder's response to Attachment B (Subcontractible Items of the Work), provide the following:

- 1. List all the DVBEs you solicited sub-bids from and how you obtained each firm's name.
- 2. Indicate method and date of solicitation (all written solicitations must conform with Public Contract Code § 4108 with respect to bonding requirements, if any).
- 3. List the method and date of follow-up and the person you contacted.

USE ONE SHEET FOR EACH SUBCONTRACTIBLE ITEM OF WORK IDENTIFIED IN ATTACHMENT B. (Photocopy as many sheets of this Attachment E as necessary.)

**Bidder Name:** \_\_\_\_\_

DVBE Solicited & Source of the Firm's Name	Method & Date of Solicitation	Follow-Up Method, Date & Person Contacted

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT F  
DVBE SUB-BIDS NOT ACCEPTED BY BIDDER**

List all DVBEs who submitted bids or quotations to the Bidder which were not accepted. Indicate if the sub-Bidder is a DVBE, identify the item of Work or materials, list the Subcontractor/Material Supplier the Bidder intends to use in lieu of the DVBE submitting a sub-bid for the identified portion of the Work, and the amount of such other sub-Bidder's bid. Give the reason the Bidder did not use the DVBE firm. **(Photocopy if additional sheets are needed.)**

**Bidder Name:** \_\_\_\_\_

<b>DVBEs Who Submitted Bids</b>	<b>Item of Work or Materials</b>	<b>Subcontractor/ Material Supplier to be Used</b>	<b>Reason DVBE Bid Not Accepted</b>



**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT G  
VERIFICATION OF DVBE SOLICITATIONS**

**Bidder Name:** \_\_\_\_\_

Identify ALL DVBE firms contacted by the Bidder for purposes of meeting the DVBE Participation Goal. If a DVBE was solicited in writing, the Bidder shall attach hereto a true and correct copy of such written solicitation; failure of the Bidder to do so may result in the District's rejection of the Bidder's Bid Proposal as being non-responsive.

<b>Name of DVBE Firm Solicited</b>	<b>Manner of Solicitation, i.e., written, personal, telephonic, etc.</b>	<b>Date of Solicitation</b>	<b>General Description of DVBE Response to Solicitation</b>

**DVBE PARTICIPATION WORKSHEETS  
ATTACHMENT H  
AGENCY CONTACTS**

**Bidder Name:** \_\_\_\_\_

Identify all local, state or federal public agencies and DVBE organizations contacted by the Bidder for the purpose of identifying potential DVBEs to meet the Participation Goal. If the Bidder received any list or other writing identifying potential DVBEs from any agency or organization set forth in this Attachment H, the Bidder shall attach hereto a true and correct copy of each such list or other writing; failure of the Bidder to so attach such list(s) or other writing(s) may result in the District rejecting the Bid Proposal of such Bidder as being non-responsive. (Photocopy if additional sheets are necessary.)

**LOCAL, STATE OR FEDERAL AGENCIES.**

Agency Name & Address	Date of Bidder's Contact with Agency	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

**DVBE ORGANIZATIONS CONTACTED.**

Organization Name & Address	Date of Bidder's Contact with Organization	Name & Telephone Number of Individual Contacted	DVBE List Received by Bidder (Indicate Yes or No & if Yes, the date of Bidder's receipt of list)

## AGREEMENT

THIS AGREEMENT is entered into as of [Click here to enter a date.](#) in the City of Compton, County of Los Angeles, State of California, by and between COMPTON COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter "District" and \_\_\_\_\_ ("Contractor").

WITNESSETH, that the District and the Contractor in consideration of the mutual covenants contained herein agree as follows:

1. **The Work.** Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete in a workmanlike manner all of the Work required in connection with the work of improvement commonly referred to as CCC-029 BOILER REPLACEMENT PROJECT. The Contractor shall complete all Work covered by the Contract Documents, including without limitation, the Drawings and Specifications prepared by the Architect and other Contract Documents enumerated in Paragraph 5 of this Agreement, along with all modifications and addenda thereto issued in accordance with the Contract Documents. The Architect/Engineer for the Work is \_\_\_\_\_.
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 \_\_\_\_\_ (\_\_\_\_) days after the commencement date of the Work set forth in the Notice to Proceed.
3. **Contract Price.** The District shall pay the Contractor as full consideration for the Contractor's full, complete and faithful performance of the Contractor's obligations under the Contract Documents, subject to adjustments of the Contract Price in accordance with the Contract Documents, the Contract Price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Contract Price is based upon the Contractor's Base Bid Proposal for the Work and the following Alternate Bid Items, if any: \_\_\_\_\_. The District's Progress Payments of the Contract Price shall be subject to retention withholdings equal to five percent (5%) of each Progress Payment ("Retention"). Retention withheld by the District shall be disbursed to the Contractor as part of the Final Payment due the Contractor.
4. **Liquidated Damages.** The Contractor shall be subject to assessment of Liquidated Damages if the Contractor: (i) fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto authorized by the Contract Documents; (ii) fails to submit Submittals in accordance with the Submittal Schedule; or (iii) fails to complete Punchlist items noted upon Substantial Completion within the time established to complete the Punchlist items. The per diem rate of Liquidated Damages assessed for each of the foregoing events is set forth in the Contract Documents.
5. **Limitation on Damages.** If the District breaches or defaults in its performance of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly and proximately caused by said breach or default of the District and shall exclude any and all special or consequential damages. By executing this Agreement, the Contractor expressly acknowledges the foregoing limitation to the recovery only of general damages from the District if the District is in breach or default of its obligations under the Contract Documents. The Contractor expressly waives any right to and foregoes the recovery of any special or consequential damages from the District including, without limitation, damages for: (i) lost or impaired bonding capacity; and/or, (ii) lost profits arising out of or in connection with any past, present, or future work of improvement, except for the Project which is the subject of the Contract Documents.

**6. The Contract Documents.** The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>00 01 10 Table of Contents</li> <li>00 11 13 Notice Calling for Bids,<br/>including Bid Addenda Nos.</li> <li>_____</li> <li>00 21 13 Instructions for Bidders</li> <li>00 41 00 Bid Proposal</li> <li>00 42 13 Alternate Bid Items Proposal<br/>Form</li> <li>00 43 24 Pre-Bid Inquiry Form</li> <li>00 43 36 Subcontractors List</li> <li>00 45 13 Statement of Qualifications</li> <li>00 45 19 Non-Collusion Affidavit</li> <li>00 45 26 Certificate of Workers<br/>Compensation Insurance</li> <li>00 45 27 Drug-Free Workplace<br/>Certification</li> <li>00 45 28 DVBE Program Policy</li> </ul> | <ul style="list-style-type: none"> <li>00 45 28.01 Bidder DVBE Statement</li> <li>00 45 28.02 Subcontractible Items</li> <li>00 45 28.03 DVBE Participation Summary</li> <li>00 45 28.04 DVBE Certification</li> <li>00 45 28.05 DVBEs Contacted</li> <li>00 45 28.06 DVBE Bids Not Accepted</li> <li>00 45 28.07 DVBE Solicitations</li> <li>00 45 28.08 Agency Contacts</li> <li>00 52 00 Agreement</li> <li>00 61 10 Bid Bond</li> <li>00 61 13 Performance Bond</li> <li>00 61 14 Labor and Material Payment Bond</li> <li>00 62 90 Verification of Certified Payroll Records<br/>Submittal to Labor Commission</li> <li>00 65 36 Guarantee Form</li> <li>00 72 00 General Conditions</li> <li>00 73 00 Special Conditions</li> </ul> |
|--|---|

**7. Notices.** Notices of the District and Contractor to the other shall be transmitted in accordance with the Contract Documents. The effective date of notices transmitted in accordance with the Contract Documents shall be as set forth in the Contract Documents. Notices under the Contract Documents shall be addressed as follows:

If to the District:  
 Felipe Lopez, CBO  
 Compton Community College District  
 1111 East Artesia Boulevard  
 Compton, CA 90221

If to the Contractor:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**8. Authority to Execute.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

**[CONTINUED ON NEXT PAGE]**

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826**

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the District and the Contractor as of the date set forth above

**DISTRICT"**  
**Compton Community College District**

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

\_\_\_\_\_  
(Name Printed or Typed)

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

**"CONTRACTOR"**  
**[Contractor Name]**

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

\_\_\_\_\_  
(Name Printed or Typed)

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

**[THIS PAGE INTENTIONALLY BLANK]**

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto COMPTON COMMUNITY COLLEGE DISTRICT (“the Obligee”) for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Obligee for the Work commonly described as **CCC-029 BOILER REPLACEMENT PROJECT**.

WHEREAS, subject to the terms of this Bond, the Surety and the Principal are jointly and severally firmly bound unto the Obligee in the penal sum equal to Ten Percent (10%) of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, inclusive of amounts proposed for Alternate Bid Items, if any.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for sixty (60) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefore, or if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the Obligee, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract and for the payment for labor and materials used for the performance of the Contract, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Obligee in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed there under, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee all costs, expenses and

**[CONTINUED NEXT PAGE]**

fees incurred by the Obligee in connection therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agents or representatives.

\_\_\_\_\_

**(Bidder-Principal Name)**

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

(Signature)

\_\_\_\_\_

(Typed or Printed Name)

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

**(Attach Notary Public Acknowledgement of Principal's Signature)**

\_\_\_\_\_

**(Surety Name)**

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

(Signature of Attorney-In-Fact for Surety)

\_\_\_\_\_

(Typed or Printed Name of Attorney-In-Fact)

**(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature)**

**Contact name, address, telephone number and email address for notices to the Surety**

\_\_\_\_\_

(Contact Name)

\_\_\_\_\_

(Street Address)

\_\_\_\_\_

(City, State & Zip Code)

(\_\_\_\_\_) \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_

Telephone      Fax

\_\_\_\_\_

(Email address)



## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto COMPTON COMMUNITY COLLEGE DISTRICT (“the Oblige”) for payment of the penal sum the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

### THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Oblige, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as CCC-029 BOILER REPLACEMENT PROJECT.

WHEREAS, the Principal, has entered into an agreement with the Oblige for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal’s prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Oblige and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Oblige by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety’s obligations or Oblige’s rights hereunder; Surety hereby waives notice from the Oblige of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Oblige’s termination of the Contract due to the Principal’s breach or default of the Principal’s obligations thereunder, within twenty (20) days after written notice from the Oblige to the Surety of the Principal’s breach or default of the Contract Documents and Oblige’s termination of the Contract, the Surety shall notify Oblige in writing of Surety’s assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense (“the Notice of Election”); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Oblige, which

**[CONTINUED NEXT PAGE]**

approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Obligee within the time provided for hereinabove, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes to the Work which increases the Contract Price.

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee of all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agent or representative

\_\_\_\_\_

**(Contractor-Principal Name)**

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

(Signature)

\_\_\_\_\_

(Typed or Printed Name)

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

**(Attach Notary Public Acknowledgement of Principal's Signature)**

**Contact name, address, telephone number and email address for notices to the Surety**

\_\_\_\_\_

(Contact Name)

\_\_\_\_\_

(Street Address)

\_\_\_\_\_

(City, State & Zip Code)

(\_\_\_\_\_) \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_

Telephone      Fax

\_\_\_\_\_

(Email address)

\_\_\_\_\_

**(Surety Name)**

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

(Signature of Attorney-In-Fact for Surety)

\_\_\_\_\_

(Typed or Printed Name of Attorney-In-Fact)

**(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature)**

**LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, \_\_\_\_\_, as Surety and \_\_\_\_\_, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto COMPTON COMMUNITY COLLEGE DISTRICT ("the Oblige") for payment of the penal sum the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

WHEREAS, the Oblige, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as **CCC-029 BOILER REPLACEMENT PROJECT**.

WHEREAS, the Principal, has entered into an Agreement with the Oblige for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term "Claimant" shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys' fees pursuant to California Civil Code §9554.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Oblige of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

**[CONTINUED NEXT PAGE]**

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agent or representative.

\_\_\_\_\_  
**(Contractor-Principal Name)**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

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

**(Attach Notary Public Acknowledgement of Principal's Signature)**

\_\_\_\_\_  
**(Surety Name)**

By: \_\_\_\_\_  
(Signature of Attorney-In-Fact for Surety)

\_\_\_\_\_  
(Typed or Printed Name of Attorney-In-Fact)

**(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature)**

**Contact name, address, telephone number and email address for notices to the Surety**

\_\_\_\_\_  
(Contact Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State & Zip Code)

(\_\_\_\_\_) \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
Telephone Fax

\_\_\_\_\_  
(Email address)

**CERTIFICATION OF CERTIFIED PAYROLL RECORDS SUBMITTAL  
TO LABOR COMMISSION**

I am the \_\_\_\_\_ for \_\_\_\_\_ in connection with  
(Superintendent/Project Manager) (Contractor)  
\_\_\_\_\_. This Certification is submitted to Compton  
(Project Name)

Community College District concurrently with the Contractor's submittal of an Application for Progress Payment to the District, identified as Application For Progress Payment No. \_\_\_\_\_ ("the Pay Application").

1. The Pay Application requests the District's disbursement of a Progress Payment covering Work performed for the period between \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_.
2. The Contractor has submitted Certified Payroll Records ("CPR") to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
3. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.
4. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.
5. I have reviewed the Subcontractors' CPRs submitted to the Labor Commissioner; the CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I executed this Certification on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at  
\_\_\_\_\_  
(City and State)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Typed or Printed Name)

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## GUARANTEE

### **Project: CCC-029 BOILER REPLACEMENT PROJECT**

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of two (2) years from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

### **Contractor**

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Signature of Contractor's Authorized Employee, Officer  
Or Representative)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)

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## GENERAL CONDITIONS

### 1. Definitions

- 1.1. The Work. The "Work" is the construction and services required by the Contract Documents, and includes all labor, materials, equipment or services to fulfill the Contractor's obligations under the Contract Documents.
- 1.2. Surety. The Surety is the person or entity that executes, as surety, the Contractor's Labor and Material Payment Bond and/or Performance Bond.
- 1.3. Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor for a portion of the Work; Subcontractors include lower tier subcontractors, who are in direct privity of contract with a Subcontractor.
- 1.4. Material Supplier. A Material Supplier only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.
- 1.5. Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Contract Documents, showing generally, the design, location and dimensions of the Work and may include plans, elevations, sections, details, schedules or diagrams. The Specifications are the written requirements for materials, equipment, construction systems, standards, criteria and workmanship.
- 1.6. Intent and Correlation of Contract Documents. The Contract Documents are complementary and what is required by one portion shall be by all; performance by the Contractor is required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. If a portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control. Words or terms with well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect based on the following standards: the Drawings are intended to describe matters relating to placement, type, quantity and the like; the Specifications are intended to describe matters relating to quality, materials, compositions, manufacturers and the like. If conflicts exist between parts of the Contract Documents regarding the quality of any product, equipment or materials, the Contractor shall provide the product, equipment or material of the highest or more stringent quality.
- 1.7. Shop Drawings; Samples; Product Data ("Submittals"). Shop Drawings are diagrams, schedules and other data specially prepared for the Work to illustrate the installation, assembly or similar matters for a portion of the Work. Samples are physical examples of materials, equipment or workmanship to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information to illustrate materials or equipment for a portion of the Work. Shop Drawings, Samples and Product Data prepared by the Contractor or any Subcontractors/Material Suppliers are collectively referred to as "Submittals."
- 1.8. Division of State Architect ("DSA"). DSA is the California Division of the State Architect; references to "DSA" include its offices, employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and the Laws.
- 1.9. Project Inspector. The Project Inspector is employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector is authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations.
- 1.10. Contract Document Terms. The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" means as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term "typical" as

used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as “typical” in all other areas similarly marked as “typical”; Work in such other areas shall conform to that shown as “typical” or as reasonably inferable therefrom.

- 1.11. Record Drawings. The Record Drawings are the Drawings marked by the Contractor during the Work to indicate completely and accurately actual as-built conditions of the Work.
- 1.12. Construction Manager. The Construction Manager, if any, is designated in the Special Conditions and is authorized to act on behalf of the District in accordance with the Contract Documents. If a Construction Manager is not designated in the Special Conditions, the District may designate a Construction Manager during performance of the Work without adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor’s obligations hereunder.
- 1.13. Construction Equipment. “Construction Equipment” is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 1.14. Site. The Site is the physical area designated in the Contract Documents for Contractor’s performance, construction and installation of the Work.
- 1.15. Field Clarifications. A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the District which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute Changes, unless a Change Order relating to a Field Clarification is authorized and issued.
- 1.16. Defective or Non-Conforming Work. Defective or Non-Conforming Work is any Work which is unsatisfactory, faulty or deficient by: (i) not conforming to the requirements of the Contract Documents; (ii) not conforming to the standards of workmanship of the applicable trade; (iii) not in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (iv) damage occurring prior to Final Acceptance.
- 1.17. Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.
- 1.18. Progress Reports; Verified Reports. Progress Reports are written reports prepared by the Contractor and its Subcontractors on a daily basis. Progress Reports must include: (i) the number of labor and supervising personnel at the Site; (ii) the labor/work classification of each laborer; (iii) a detailed description of the Work in progress and completed; (iv) weather/environmental conditions; and (v) problems encountered with a potential impact to the Contract Time or the Contract Price. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by Title 24 of the California Code of Regulations.
- 1.19. Laws. “Laws” refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work and which apply to any portion of the Work, including those in effect as of the execution of the Agreement, amendments thereto and subsequently enacted Laws that take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for the Contractor’s compliance with the Laws.

## 2. District

### 2.1. Information Required of District.

2.1.1. Surveys; Site Information. Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations is set forth in the Contract Documents. Information not provided by the District but required to complete the Work shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time. The Contractor shall verify all information provided by the District. Variations between conditions or existing improvements depicted in the Contract Documents and those actually

encountered in the performance of the Work shall not result in any District liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

2.1.2. Permits; Fees. Except as otherwise provided in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments and charges required for construction of the Work.

2.1.3. Drawings and Specifications. The District shall furnish the Contractor, without cost to the Contractor, the number of copies of the Drawings and the Specifications as set forth in the Special Conditions. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the Drawings or the Specifications other than the Work of the Project.

2.2. District's Right to Stop the Work. The District may, by written order, direct the Contractor to stop any portion of the Work if the Contractor: (i) fails to correct Defective or Non-Conforming Work; or (ii) fails to carry out the Work in conformity to the Contract Documents. The right of the District to stop the Work hereunder shall not: (i) be deemed a duty of the District to exercise such right for the benefit of the Contractor; (ii) waive or limit the exercise of any other right or remedy of the District under the Contract Documents or the Laws; or (iii) result in adjustment of the Contract Time or the Contract Price.

2.3. Partial Occupancy or Use. The District may occupy or use any completed or partially completed portion of the Work. Immediately prior to such partial occupancy or use of the Work, the District, Project Inspector, Contractor, Construction Manager and Architect shall jointly inspect the portion of Work to be used or occupied by the District to record the condition of the Work. Corrective action noted in such inspection shall be promptly performed and completed by the Contractor so the Work conforms to requirements of the Contract Documents and the District's occupancy or use thereof is not impaired. The District's use or occupancy of the Work or portions thereof is not "completion" of the Work pursuant to Public Contract Code §7107 nor constitute the District's acceptance Defective or Non-Conforming Work.

2.4. The Project Inspector.

2.4.1. Authority. All Work shall be performed under the observation of the Project Inspector, whose authority is established by the Laws and the Contract Documents. Duties of the Project Inspector shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents. The Project Inspector does not have authority: (i) to interpret the Contract Documents or to modify the Work depicted in the Contract Documents; or (ii) relating to the Contractor's safety plan. Upon the Project Inspector's issuance of a report or other similar statement identifying Defective or Non-Conforming Work, the Contractor shall promptly repair, replace or correct the same so that it conforms to requirements of the Contract Documents. If the Contractor fails or refuses to promptly remedy Defective or Non-Conforming Work, the District may remedy such Defective or Non-Conforming Work at the expense of the Contractor.

2.4.2. Facilities and Information for the Project Inspector. The Contractor shall provide to the Project Inspector all information, data and similar materials as necessary or appropriate for the Project Inspector's purposes of fulfilling the Project Inspector's obligations relating to observations and inspections of the Work. The Contractor shall provide, without adjustment of the Contract Price, for use by the Project Inspector, the District and Construction Manager the facilities, equipment, furnishings and services set forth in the Special Conditions. If the Contractor does not provide the facilities, furnishings, equipment and services set forth in the Special Conditions, or fails to pay timely any charges or fees arising out of the use of the same, the District may, as applicable, procure facilities, furnishings, equipment and services required by the Contract Documents or pay outstanding charges, at the expense of the Contractor.

2.5. Communications Software. The District reserves the right to implement electronic data and/or

communications software (such as Primavera Expedition®) for data and communications relating to the Work ("Communications Software"). The Contractor's use of Communications Software will be as directed by the District without charge or expense to the Contractor and without adjustment of the Contract Price or the Contract Time.

### 3. Architect

- 3.1. Architect's Administration of the Contract. The Architect will provide administration of the Contract and will be one of the District's representatives during construction until the time that Final Payment is due the Contractor under the Contract Documents. The Architect is authorized to act on behalf of the District as provided for in the Contract Documents and shall have the responsibilities and authority over the Work as established by the Laws.
- 3.2. Periodic Site Inspections. The Architect will visit the Site at intervals appropriate to the stage of construction to: (i) become generally familiar with the progress and quality of the completed Work; and (ii) determine if the Work is being performed so that when completed will be in accordance with the Contract Documents. On the basis of Site observations as an architect, the Architect will keep the District informed of the progress of the Work, and endeavor to guard the District against defects and deficiencies in the Work. The Architect is authorized to reject Defective or Non-Conforming Work. The Architect may require additional inspections or tests, whether or not the Work is fabricated, installed or completed.
- 3.3. Contractor Responsibility for Construction Means, Methods and Sequences. The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility.
- 3.4. Submittals. The Architect will review and accept or take other appropriate action relating to Submittals for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. The Architect's review of Submittals shall not: (i) relieve the Contractor of its obligations under the Contract Documents; (ii) constitute approval of safety measures, programs or precautions; or (iii) constitute the direction of construction means, methods, techniques, sequences or procedures. The Architect's review and return of reviewed Submittals will conform to the time limits set forth in the Specifications, the Construction Schedule or other provisions of the Contract Documents. If no time limits are established in the foregoing, the Architect shall have fourteen (14) days for review and return of Submittals.
- 3.5. Changes; Change Orders. The Architect will prepare Change Orders, and may authorize minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price. The Architect may issue Field Clarifications and Construction Change Directives.
- 3.6. Interpretation of Contract Documents. The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests will be made promptly and within the time limits agreed upon; if agreement establishing the time for the Architect's review and response to requests is not reached, the Architect shall have fifteen (15) days after receipt of such request to respond thereto. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. The Architect's decisions on matters relating to aesthetic effect are final if consistent with the intent expressed in the Contract Documents.



- 3.7. Contractor Request for Information. If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively "the Conditions"), the Contractor must request information from the Architect necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Architect reasonably determines that any of Contractor's request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the Contractor or any Subcontractor; or (ii) does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District to process, review, evaluate and respond to such request for information, including without limitation, fees of the Architect.
- 3.8. Communications; Architect's Role. All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications shall be reduced to writing. Communications between the Contractor and the District shall be through the Architect or Construction Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others shall be available to the District for review, inspection and reproduction as requested from time to time.

#### 4. The Contractor

##### 4.1. Contractor Review of Contract Documents.

4.1.1. Examination of Contract Documents. The Contractor shall carefully study Contract Documents and information furnished by the District and shall immediately notify the Architect in writing of errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect, the Contractor shall bear the costs for correction of the same.

4.1.2. Measurements, Layouts and Field Engineering. The Contractor shall take field measurements and verify field conditions at the Site. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by an engineer registered under the Laws and without adjustment of the Contract Price. The Contractor shall complete all surveys necessary for performance of the Work and for establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work.

4.1.3. Drawings; Dimensions. Unless otherwise expressly provided, dimensions indicated in the Drawings are: (i) intended for reference only; and (ii) diagrammatic and schematic in nature. The Contractor is solely responsible for dimensioning and coordinating the Work of the Contract Documents. No Contract Price adjustment will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings.

4.1.4. Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents and the Laws.

##### 4.2. Site Investigation; Subsurface Conditions.

4.2.1. Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other available subsurface data and has satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is neither guaranteed or warranted by the District to be complete and accurate. The District assumes no responsibility for any conclusions or interpretations of the Contractor on the basis of available

subsurface data or other information furnished by District under the Contract Documents.

4.2.2. Subsurface Conditions. If the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If the District determines that the conditions so materially differ or involve such hazardous materials requiring an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. Pursuant to California Public Contract Code §7104, disputes between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents.

4.3. Supervision and Construction Procedures.

4.3.1. Supervision of the Work. The Contractor shall supervise and direct performance of the Work, using the Contractor's best skill and attention. The Contractor is responsible to the District for acts and omissions of the employees, agents and representatives of the Contractor and Subcontractors.

4.3.2. Noise and Dust Control. The Contractor shall implement all measures necessary for noise and dust control during Work at the Site, including specific care to avoid deposits of airborne dust or airborne elements.

4.3.3. Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish. The Contractor shall maintain the Site in a "rake-clean" standard on a daily basis. The Project Inspector or Construction Manager may direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so at the Contractor's expense.

4.3.4. Cutting and Patching. The Contractor is responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration.

4.3.5. Construction Utilities. The District will furnish and pay the costs of utility services for the Work as set forth in the Special Conditions; all other utilities necessary to complete the Work shall be obtained by the Contractor without adjustment of the Contract Price. The Contractor shall furnish and install temporary distributions of utilities at the Site as necessary for the Work, including utilities furnished by the District. All temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of utility services obtained by the Contractor and the installation and removal of temporary distributions thereof are included in the Contract Price.

4.3.6. Existing Utilities; Removal, Relocation and Protection. Pursuant to California Government Code §4215, the District assumes responsibility for timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Contract Documents. The Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy and for Construction Equipment on the Site necessarily idled during such work. The Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when

such delay is caused by the failure of the District or the utility owner to provide for removal or relocation of such utility facilities. The District is not required to indicate existing service laterals or appurtenances if presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified in the Contract Documents, the Contractor shall immediately notify, in writing, the District, Project Inspector, Architect, Construction Manager and the utility owner. If such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

4.4. Conferences and Meetings. A material obligation of the Contractor is the attendance by the Contractor's supervisory and/or management personnel (who shall be authorized to act on behalf of the Contractor) at meetings relating to the Work, including weekly progress meetings. The Contractor is responsible for arranging for attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District. All costs, expenses, charges or fees incurred by the Contractor in connection with attendance and participation meetings relating to the Work shall be without adjustment of the Contract Time or the Contract Price. The Architect or Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. The Contractor shall have five (5) days after the date of distribution of minutes to notify the Construction Manager and Architect in writing of objections to such minutes. Failure of the Contractor to interpose objections within said five (5) days will result the minutes as distributed constituting the official record of the meeting or conference. Objections of Subcontractors or Material Suppliers to minutes shall be submitted to the Architect or Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled meeting.

4.5. Labor and Materials.

4.5.1. Payment for Labor, Materials and Services. The Contractor shall provide and pay for labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and/or services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

4.5.2. Employee Discipline and Competency. The Contractor shall enforce strict discipline and good order among employees of the Contractor, Subcontractors and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its employ and direct any Subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work.

4.5.3. Contractor's Superintendent. The Contractor's superintendent shall at the Site at all times during the Work. The superintendent shall represent the Contractor and communications given to the superintendent shall be binding as if given to the Contractor. The Contractor shall submit to the District a written statement of the qualifications of the Contractor's proposed Superintendent. Acceptance of the Contractor's proposed Superintendent is subject to establishing the Superintendent's: (i) skills, experience and other capabilities of the proposed Superintendent to supervise, coordinate and manage the Work; (ii) fluent verbal and written English language capabilities; (iii) competency in reading, comprehending and understanding Drawings, Specifications and other technical construction-related materials; and (iv) recent experience in completing construction projects similar to the Work within the budget and time established for such other construction projects. Upon acceptance of the Contractor's Superintendent, the Contractor shall not be change the Superintendent without prior consent

of the District, unless the Superintendent: (i) is unsatisfactory to the Contractor; or (ii) is determined by the District to be unfit, incompetent or incapable of performing functions and responsibilities assigned.

4.5.4. Prohibition on Harassment. Any person engaging in a prohibited form of harassment is subject to immediate removal and thereafter excluded from the Site. Upon the District's receipt of any notice or complaint that a person performing Work at the Site has engaged in a prohibited form of harassment ("Worker"), the District will promptly undertake an investigation of such notice or complaint. If the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District will notify the Contractor of the same and direct that the Worker be immediately removed from the Site. Unless the District's determination is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any Worker determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. The Contractor and the Surety shall defend, indemnify and hold harmless the Indemnified Parties from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any Worker that the direction of the District pursuant to the foregoing was improper; or (ii) the assertion by any person that a Worker has engaged in a prohibited form of harassment directed to or affecting such person.

4.5.5. Taxes. The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

#### 4.6. Permits, Fees and Notices; Compliance With Laws.

4.6.1. Payment of Permits, Fees. Unless otherwise provided in the Contract Documents, the District shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work. The foregoing notwithstanding: (i) the Contractor shall pay all fees, costs or other expenses associated with or arising in connection with Deferred Approval Items without adjustment of the Contract Price; and (ii) the Contractor shall obtain the following permits/approvals if applicable to the Work without adjustment of the Contract Price: (a) Temporary Fire Department plan check and permits for temporary material handling, storage and/or dispensing facilities for fuel, oil, liquid or gases; (b) industrial waste and AQMD permits relating to temporary facilities used in connection with any portion of the Work; (c) local business license; (d) traffic control, OSHA and offsite improvement permits; and (e) sewer, water, storm drain, gas tie plan check permits.

4.6.2. Compliance With Laws. The Contractor shall comply with and give notices required by the Laws and other orders of public authorities bearing on performance of the Work. All Work completed by the Contractor shall be in compliance with the Laws.

4.6.3. Notice of Variation From Laws. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable Laws, the Contractor shall promptly notify the Architect, Construction Manager and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to the Laws without such notice to the Architect, Construction Manager and the Project Inspector, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

4.6.4. DIR Registration. At all times during the Work, the Contractor shall be a DIR registered contractor. Performance of any Work by the Contractor without the Contractor being a DIR registered contractor at the time Work is performed is the Contractor's default in performance of a material obligation of the Contractor under the Contract Documents.

#### 4.7. Submittals. Submittals are not part of the Contract Documents. Submittals shall demonstrate,

for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to furnish, install or incorporate such Work in conformity with the information given and the design concept expressed in the Contract Documents.

4.7.1. Contractor's Submittals.

4.7.1.1. Prompt Submittals. All Submittals required by the Contract Documents shall be prepared, assembled and submitted by the Contractor to the Architect in a timely manner or within the time indicated in the Submittal Schedule incorporated into the Accepted Construction Schedule.

4.7.1.2. Contractor Approval of Subcontractor Submittals. All Submittals prepared by Subcontractors or Material Suppliers shall bear the written approval of the Contractor prior to submission to the Architect for review, with the approval indicating that the Contractor has verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has verified that the information contained within such Submittals conform to the requirements the Contract Documents. Any Submittal submitted without the Contractor's written approval will be returned to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Submittals shall be numbered consecutively and include the following: (i) date of submission; (ii) project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required for the Architect's review of Submittals.

4.7.1.3. Contractor Responsibility for Deviations. The Contractor is not relieved of responsibility for correcting deviations from the Contract Documents by the Architect's review of Submittals unless the Contractor specifically informs the Architect in writing of such deviation at the time of submission of the Submittal and the Architect accepts the specific deviation.

4.7.1.4. No Performance of Work Without Architect Review. The Contractor shall perform no portion of the Work requiring the Architect's review of Submittals until the Architect has completed its review and accepted the Submittal. The Contractor shall not perform any portion of the Work affected by a related Submittal until the related Submittal is reviewed and accepted by the Architect.

4.7.2. Architect Review of Submittals. If the Architect returns a Submittal as rejected or requiring correction(s) with re-submission, the Contractor shall promptly resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Architect's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect may rely on the accuracy and completeness of such calculations and certifications accompanying Submittals. The following notations or notations of a similar nature noted on a reviewed Submittal will require the Contractor action noted below.

<b>Submittal Notation</b>	<b>Required Contractor Action</b>
No Exceptions Taken	No formal revision required
Make Corrections Noted	Make revision noted; re-submission of revised Submittal not required.
Revise and Re-Submit	Revise Submittal in accordance with notations and re-submit for review.
Rejected Re-Submit	Prepare new alternative Submittal and re-submit for review.

4.7.3. Deferred Approval Items. If any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, Contractor is responsible for preparing Submittals for Deferred Approval Items. Where required by the Laws or the nature of a Deferred Approval,

the Deferred Approval Design shall be completed and stamped by a California licensed architect or California registered engineer. The Deferred Approval Design shall: (i) incorporate all requirements of the Deferred Approval as set forth in the Contract Documents; (ii) be coordinated with other portions of the Work; (iii) be completed in a timely manner so as not to delay, disrupt or interfere with completion of the Work within the Contract Time; and (iv) be completed in accordance with the applicable professional standard of care. The Contractor shall submit each completed Deferred Approval Design to the Architect for review and acceptance. Upon the Architect's acceptance of a Deferred Approval Design, the Contractor shall be responsible for: (i) submittal of the Deferred Approval Design to DSA for review and approval; (ii) modifications to the Deferred Approval Design as necessary to obtain DSA approval; and (iii) payment of fees or charges imposed by DSA for review and approval of a Deferred Approval Design without adjustment of the Contract Price. Notwithstanding review and acceptance of a Deferred Approval Design by the Architect or DSA issuance of approval to construct pursuant to the Contractor's Deferred Approval Design, the Contractor remains liable to the District for all losses, damages, costs, or other consequences of the failure of any Contractor's Deferred Approval Design to: (i) conform to the applicable design professional standard of care; (ii) conform to design intent and/or aesthetic requirements established in the Contract Documents; or (iii) perform and function in accordance with requirements established in the Contract Documents.

#### 4.8. Materials and Equipment.

4.8.1. Approval of Substitutions or Alternatives. The Contractor may propose alternatives or substitutes for items specified in the Contract Documents ("Alternative Products"), provided that: (i) the Alternative Products comply with the requirements of the specified item; (ii) the Contractor certifies that the quality, performance capability and functionality (including aesthetics) of the Alternative Products meet or exceed the quality, performance capability and functionality of the specified item; and (iii) use of the Alternative Product will not delay completion of the Work or increase the Contract Price. The Contractor shall submit engineering, construction, dimension, visual, aesthetic and performance data ("Substantiating Data") to the Architect to permit evaluation of the Alternative Products. The Contractor shall not furnish or install any Alternative Products without the Architect's acceptance of the Alternative Products. The Architect's decision evaluating the Contractor's proposed Alternative Products shall be final. Neither the Contract Time nor the Contract Price shall be increased on account of any Alternative Products accepted by the Architect. The Contract Price shall be reduced by the actual cost savings realized by the Contractor's furnishing and/or installation of accepted Alternative Products. The Contractor is solely responsible for all costs and fees incurred by the District to review proposed Alternative Products, including without limitation fees of the Architect, design consultants to the Architect and/or governmental agencies to review and/or approve any proposed substitution or alternative. All requests for the Architect's review and approval of any Alternative Products and all Substantiating Data shall be submitted by Contractor not later than thirty-five (35) days following the date of the District's award of the Contract to Contractor; any request for approval of Alternative Products submitted thereafter may be rejected summarily. The foregoing process and time limits shall apply to any proposed Alternative Products regardless of whether the Alternative Products are furnished or installed by the Contractor, a Subcontractor or Material Supplier.

4.8.2. District Standard Products; "Sole Source" Products. If any material, equipment, product or other item ("Product") is designated in the Contract Documents as a "District Standard" or by similar words/terms, the District is deemed to have made a finding that such Product is designated and specified to match other Products in use in a completed or to be completed work of improvement and not subject to Alternative Products.

4.8.3. Placement of Material and Equipment Orders. The Contractor and Subcontractors shall promptly place all orders for materials and/or equipment for completion of the Work so that

delivery of the same shall be made without delay or interruption to the Work. When requested by or on behalf of the District, the Contractor shall furnish written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor.

4.8.4. District's Right to Place Orders for Materials and/or Equipment. If the District determines, in its sole discretion, that orders for materials and/or equipment have not been placed in a manner so Substantial Completion is achieved within the Contract Time, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. The Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders.

- 4.9. Safety. The Contractor is solely responsible for initiating, maintaining and supervising all safety programs required by the Laws or by the type or nature of the Work and for initiating and maintaining reasonable safety precautions to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site or in transit; and (iii) other property or items at the Site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The foregoing includes, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Duties of the Contractor's Superintendent include prevention of accidents and the implementation of safety precautions and programs. In an emergency, the Contractor shall take necessary action to prevent or mitigate threatened damage, injury or loss.
- 4.10. Hazardous Materials; Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). If the Contractor or any Subcontractor uses, at the Site, or incorporates into the Work, any material or substance deemed to be hazardous or toxic under the Laws (collectively "Hazardous Materials"), the Contractor shall comply with the Laws relating to the use, storage or disposal thereof. It is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. If any product or material forming a part of the Work or incorporated into the Work is found to contain ACBMs, the Contractor shall at its sole cost and expense: (i) remove such product or material in accordance with the Laws; (ii) replace such product or material with non-ACBM products or materials; and (iii) return the affected portion(s) of the Work to the finish condition depicted in the Contract Documents relating to such portion(s) of the Work. The foregoing obligations shall survive the termination of the Contract, the warranty period provided under the Contract Documents, completion of the Work or the District's acceptance of the Work. If the Contractor fails or refuses, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to the Contractor, the District may thereafter proceed to cause the removal and replacement of such materials or products; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, shall be the joint and several responsibility of the Contractor and the Surety.
- 4.11. Maintenance of Record Drawings. During the Work, the Contractor shall continuously maintain Record Drawings consisting of a set of the Drawings marked to indicate all field changes to adapt the Work depicted in the Drawings to field conditions, Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. If the District

reasonably determines that the Contractor has not been, or is not, continuously maintaining the Record Drawings pursuant to the foregoing, the District may take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, at the Contractor's expense. Prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the Architect.

- 4.12. Use of Site. The Contractor shall confine operations at the Site to areas permitted the Laws and the Contract Documents and shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor is solely responsible for providing security at the Site with all such costs included in the Contract Price. Except in an emergency, no construction activities shall be permitted at or about the Site except during the hours and days set forth in the Special Conditions; Work performed at hours or on days not noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price.
- 4.13. Access to the Work. The Contractor shall provide DSA, District, Construction Manager, the Project Inspector and Architect with access to the Work, whether in place, preparation and progress and wherever located.
- 4.14. Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.
- 4.15. Wage Rates; Employment of Labor.
- 4.15.1. Payment of Prevailing Rates. There shall be paid each worker of the Contractor and Subcontractors engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such worker. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations will monitor and enforce the obligation of the Contractor and Subcontractors to pay laborers at least the Prevailing Wage Rate established for the classification of work/labor performed.
- 4.15.2. Prevailing Rate Penalty. If a worker of the Contractor or a Subcontractor is paid less than the prevailing wage rate for the work or craft provided by the worker, the Contractor and/or Subcontractor shall be subject all penalties and assessments established by the Laws.
- 4.15.3. Certified Payroll Records. The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4. The form and content of Certified Payroll Records shall be as established by the Labor Commissioner and the frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code §1771.4. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor in accordance with the Laws. If the Contractor and/or Subcontractor fail or refuse to produce payroll records as required by the Laws, the Contractor and/or Subcontractor shall be subject to all penalties and assessments under the Laws as a result of such failure or refusal.
- 4.15.4. Hours of Work. The Contractor and Subcontractors shall limit the hours of work by their respective workers to those permitted by the Laws. Hours of work exceeding those permitted by the Laws shall be subject to additional premium wage payments as required by the Laws. Failure of the Contractor or Subcontractors to comply with the foregoing will subject the Contractor and/or Subcontractor to all penalties and assessments under the Laws.



- 4.16. Apprentices. Apprentices for the Work shall be in strict conformity with the Laws, including without limitation, Labor Code §§1777.5 through 1777.7, the provisions of which are incorporated herein by this reference. The responsibility for compliance with apprenticeship requirements is solely and exclusively that of the Contractor. If the Contractor willfully fails to comply with these provisions and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall be subject to all penalties and assessments established by the Laws.
- 4.17. Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide services for the Work where the services provided or to be provided requires the person to hold a valid California Contractors' license and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. Employment of any person in violation of the foregoing, will subject the Contractor to the civil penalties under California Labor Code §1021.5 and any other penalty provided by the Laws. All Subcontractors shall comply with the foregoing.
- 4.18. Assignment of Antitrust Claims. The Contractor and all Subcontractors assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.) pursuant to California Government Code §4551. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties.
- 4.19. Progress Reports; DSA Verified Reports.
- 4.19.1. DSA Verified Reports: Contractor Actions. A material obligation of the Contractor is completion of all actions and activities which by the Contract Documents or by the Laws are the responsibility of the Contractor relating to DSA reporting requirements pursuant to Education Code §81141 (including amendments thereto) and issuance of DSA's Certificate of Compliance for the Project pursuant to Education Code §81147 (including amendments thereto) upon completion of the Work. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction and the filing of the Final Verified Report with DSA within ten (10) days of the determination of Final Completion. Concurrently with submittal to DSA, the Contractor shall provide the District, Project Inspector and Architect with copies of all Verified Reports completed by the Contractor and submitted to DSA.
- 4.19.2. District Withholdings From Final Payment. The completion and filing of the DSA Final Verified Report is an express condition precedent to the District's disbursement of the Final Payment. If the Contractor fails to prepare and file the Final Verified Report within ten (10) days of the determination of Final Completion, the District may retain and withhold an amount not to exceed ten percent (10%) of the Final Payment from disbursement to the Contractor as damages for the failure of the Contractor to have timely and completely discharged its obligations hereunder. The Contractor acknowledges and agrees that the foregoing withholdings by the District is a reasonable estimate of the damages and other losses the District will sustain due to the failure of the Contractor to have timely and fully discharged its obligations hereunder.
- 4.19.3. Progress Reports. Progress Reports shall be submitted to the District or Construction Manager not later than 9:00 A.M. of the ensuing business day.

## 5. Subcontractors.

- 5.1. Subcontracts. Work performed by Subcontractors shall be pursuant to a written agreement

between the Contractor and each Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and obligates the Subcontractor to assume toward the Contractor and Architect all the obligations and responsibilities of the Contractor which the Contractor assumes toward the District and the Architect. No contractual relationship shall exist, or deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to these General Conditions, subject to the prior rights, if any, of the Surety.

5.2. Subcontractor DIR Contractor Registration.

5.2.1. No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.

5.2.2. Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.

5.2.3. Contractor Obligation to Request Substitution of Listed Subcontractor Who Is Not DIR Registered Contractor. If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

5.3. Substitution of Listed Subcontractor.

5.3.1. Substitution Process. Any request of the Contractor to substitute a listed Subcontractor must be in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs, fees or expenses incurred by the District, including, those of the Project Inspector, Architect and/or Construction Manager or attorneys in review, evaluation or hearing relating to a request to substitute a listed Subcontractor shall be borne by the Contractor.

5.3.2. Responsibilities of Contractor Upon Substitution of Subcontractor. The District's consent to Contractor's substitution of a listed Subcontractor shall not result in any increase of the Contract Price or the Contract Time.

5.4. Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of

the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to be built into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work.

## 6. Insurance, Indemnity and Bonds.

- 6.1. Workers' Compensation Insurance; Employer's Liability Insurance. The Contractor shall purchase and maintain: (i) Workers' Compensation Insurance covering claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts; and (ii) Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor.
- 6.2. Commercial General Liability and Property Insurance. The Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which the Contractor may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractor's pollution liability; (vi) contractual liability insurance applicable to the Contractor's obligations under the Contract Documents; and (vii) Completed Operations.
- 6.3. Builder's Risk "All-Risk" Insurance. The Contractor shall obtain Builder's Risk "All-Risk" Insurance covering vandalism and malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the entire Work, including completed Work and Work in progress to the full insurable value thereof. Contractor's Builders Risk Insurance shall include seismic coverage if so indicated in the Special Conditions. Such insurance shall include the District as an additional named insured, and any other person with an insurable interest designated by the District as an additional named insured. The risk of damage to the Work due to the perils covered by the Builder's Risk "All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for such loss or damage shall be recognized by the District, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 6.4. Coverage Amounts. The insurance required of the Contractor hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by the Laws, whichever is greater.
- 6.5. Evidence of Insurance; Subcontractor's Insurance.
- 6.5.1. Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver Certificates of Insurance to the District evidencing the insurance coverages required by the Contract Documents. The Certificates of Insurance shall contain a provision that coverages under such policies will not be canceled or expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District as an additional insured as its interests may appear.
- 6.5.2. Subcontractors' Insurance. Each Subcontractor shall obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 with minimum coverage limits as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, the Contractor's insurance obligations. Each policy of insurance of a Subcontractor shall conform to the requirements of this Article 6. The Contractor shall promptly deliver Certificates of Insurance to the District evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6.

6.5.3. Insurer Requirements. Policies of insurance required of the Contractor and Subcontractors hereunder shall be acceptable to the District only if the insurer issuing each such policy of insurance is A.M. Best rated at least A-/VII and authorized by the Laws to issue policies of insurance in California.

6.6. Contractor's Insurance Primary; Contractor Liability for Deductibles. All insurance coverages maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. If the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Comprehensive General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required of the Contractor and Subcontractors shall be included in the Contract Price. The Contractor is solely and exclusively responsible for payment of deductibles under any policy of insurance obtained and maintained by the Contractor or any Subcontractor.

6.7. Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct the District, Construction Manager, Project Inspector or Architect, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District, its Board of Trustees and each individual member thereof, and the officers, employees, agents and representatives of the District; (ii) the Architect and its consultants for the Work and their respective agents and employees; (iii) the Project Inspector; and (iv) the Construction Manager and its agents and employees. The Contractor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys' fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor, Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; (iii) theft, loss or destruction of property; (iv) Stop Payment Notice claims asserted in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any Subcontractor, or any other person or entity employed directly or indirectly by Contractor or a Subcontractor in connection with the Work and their respective agents, representatives, officers or employees. If any action or proceeding is commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and any of the Indemnified Parties are a party thereto, the Contractor shall, at its sole cost and expense, defend the Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. If there is any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, the Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract, until barred by the applicable Statute of Limitations.

6.8. Payment Bond; Performance Bond. Prior to commencing the Work, the Contractor shall obtain and deliver to the District a Performance Bond and a Labor and Material Payment Bond each in a penal sum equal to one hundred percent (100%) of the Contract Price and in the

form and content set forth in the Contract Documents. The Surety issuing bonds shall be an Admitted Surety Insurer as defined in California Code of Civil Procedure §995.120 and A.M. Best rated at least A-/VII. Obligations of the Surety under the Performance Bond include without limitation, the Contractor's post-construction obligations, including timely and complete performance of warranty/guarantee obligations.

## 7. Contract Time

7.1. Substantial Completion of the Work Within Contract Time. The Contract Time is the period of time, including authorized adjustments thereto, for achieving Substantial Completion of the Work. The date for commencement of the Work is the date established in the Notice to Proceed issued by the District pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible. The date of Substantial Completion is the date certified by the Architect, Construction Manager and Project Inspector.

7.2. Progress and Completion of the Work.

7.2.1. Time of Essence. Time limits stated in the Contract Documents are of the essence. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time.

7.2.2. Substantial Completion. Substantial Completion is when the Work is complete in accordance with the Contract Documents so the District can occupy or use the Work for its intended purpose. Substantial Completion shall be determined by the Architect, Construction Manager and Project Inspector upon request by the Contractor. The good faith and reasonable determination of Substantial Completion by the Project Inspector, Construction Manager and the Architect shall be controlling and final.

7.2.3. Correction or Completion of the Work After Substantial Completion.

7.2.3.1. Punchlist. Upon achieving Substantial Completion of the Work, the District, The Project Inspector, Construction Manager, Architect and Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor ("the Punchlist"). The exclusion of an item on the Punchlist shall not limit the Contractor's obligation to complete or correct any portion of the Work in accordance with the Contract Documents.

7.2.3.2. Time for Completing Punchlist Items. The Construction Manager, Contractor and Architect shall, establish a reasonable time for Contractor's completion of the Punchlist. If mutual agreement is not reached, the Architect shall determine such time, which is final and binding upon the District and Contractor so long as the Architect's determination is made in good faith. The Contractor shall promptly and diligently complete all Punchlist items within the time established. If the Contractor fails to complete the Punchlist within the time established, the Contractor shall be subject to assessment of Liquidated Damages and the District may in its sole and exclusive discretion, without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however, that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or the Laws, including assessment of Liquidated Damages. If the District elects to complete Punchlist items of the Work, pursuant to the foregoing, the Contractor shall be responsible for all costs incurred by the District in connection herewith. If these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are jointly and severally liable to District for any such excess costs.

7.2.3.3. Final Completion. Final Completion is when all Work has been completed in accordance with the Contract Documents, including without limitation, completion of

the Punchlist, the Contractor's close-out responsibilities under the Contract Documents have been fully performed. Final Completion shall be determined by the Architect, Construction Manager and Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector, Construction Manager and Architect shall be controlling and final.

7.2.3.4. Contractor Responsibility for Multiple Inspections. If the Contractor requests determination of Substantial Completion or Final Completion and the Project Inspector, Construction Manager or Architect determine that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Architect, Construction Manager and Project Inspector.

7.2.4. Final Acceptance. Final Acceptance of the Work shall occur upon acceptance of the Work by the District's Board of Trustees; such acceptance shall be submitted for consideration at a regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents the date of Final Acceptance.

### 7.3. Construction Schedule.

7.3.1. Submittal of Preliminary Construction Schedule. Within five (5) days following execution of the Agreement, the Contractor shall prepare and submit to the District, Construction Manager and Architect a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. As required by the District or Construction Manager, the Construction Schedules shall; (i) be prepared with a commercially available computer software program in a critical path format; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment; (iii) identify each Submittal required by the Contract Documents, the date for the Contractor's submission of each Submittal and the date for the return of the reviewed Submittal to the Contractor. Any "float" time (the time between earliest finish date and the latest finish date of an activity shown on the Construction Schedule) incorporated into the Construction Schedules is jointly owned by the District and the Contractor.

7.3.2. Review of Preliminary Construction Schedule. The District and Construction Manager will review the Preliminary Construction Schedule for conformity with the requirements of the Contract Documents. Comments of the District will be returned to the Contractor with the reviewed Preliminary Construction Schedule.

7.3.3. Accepted Construction Schedule. Within ten (10) days of the District's return of the Preliminary Construction Schedule to the Contractor, the Contractor shall prepare and submit to the District and Construction Manager a revised Construction Schedule incorporating therein the comments to the Preliminary Construction Schedule and submit the same to the District and the Construction Manager for review and acceptance. The review and revision of the Preliminary Construction Schedule shall continue until the District has accepted the entirety of the Construction Schedule, referred to herein as the "Accepted Construction Schedule."

7.3.4. Revisions to Accepted Construction Schedule. If the progress of the Work or the sequencing of the activities of the Work materially differs from that indicated in the Accepted Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the Contractor to revise the Accepted Construction Schedule; within fifteen (15) days of the District's direction, the Contractor shall prepare and submit to the District and Construction Manager a revised Accepted Construction Schedule for review and acceptance by the District. If a Revised Accepted Construction Schedule is accepted by the District, the Contractor's performance of Work shall conform to such Revised Accepted

Construction Schedule.

7.3.5. Updates to Accepted Construction Schedule. The Contractor shall update the Accepted Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as requested by the District. On or before the fifth (5<sup>th</sup>) day of each month, the Contractor shall deliver to the District and Construction Manager an updated Accepted Construction Schedule indicating progress achieved and activities commenced or completed in the prior updated Accepted Construction Schedule. If requested by the District, the Contractor shall also submit, with its updated Accepted Construction Schedules a narrative statement describing current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. If the progress of the Work is behind that indicated in the Accepted Construction Schedule, the Contractor's narrative statement shall indicate what measures will be taken to place the Work back on schedule. The Contractor's preparation and submittal of the narrative described above is a material obligation of the Contractor.

7.3.6. Contractor Responsibility for Construction Schedule. The Contractor is responsible for preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents. Failure of the Contractor to do so is the Contractor's default in the performance of a material obligation of the Contractor under Contract Documents. All costs or expenses incurred relating to Construction Schedules shall be solely that of the Contractor without adjustment of the Contract Price.

7.4. Adjustment of Contract Time. If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

7.4.1. Excusable Delays. If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Architect; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays are unforeseeable and unavoidable casualties or causes beyond the control, and without fault or neglect, of the Contractor, or other person directly or indirectly engaged by the Contractor for any portion of the Work, including unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions or DSA directive to stop the Work which is not the result of the failure of the Contractor to comply with the Contract Documents. The financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor for the Work are not conditions beyond the control of the Contractor. If an Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) justifying adjustment of the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by the Contractor or a for any portion of the Work; and (iii) that the event(s) justifying adjustment of the Contract Time directly and adversely impacted the progress of the Work on the critical path of the then current Accepted Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. If the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain-related unusually severe weather conditions until the actual number of Rain Days during performance of the Work exceeds those noted in the Special Conditions and such additional Rain Days shall have directly and adversely impacted the progress of the Work on the critical path of the then current Accepted Construction Schedule relative to the date(s) of such additional Rain Days.

7.4.2. Compensable Delays. If Substantial Completion of the Work is delayed by the acts or omissions of the District, the Construction Manager, the Architect, or separate contractor

employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted for such reasonable period of time as determined by the Construction Manager and District. Pursuant to California Public Contract Code §7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials, equipment or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents.

7.4.3. Inexcusable Delays. Inexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Inexcusable Delays.

- 7.5. Liquidated Damages. If the Contractor fails to: (i) submit Submittals in accordance with the Accepted Construction Schedule or in a timely manner; (ii) achieve Substantial Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents); or (iii) complete Punchlist items within the time established, the Contractor shall be liable to the District for per diem Liquidated Damages set forth in the Special Conditions, not as a penalty but as Liquidated Damages which are agreed upon because of the difficulty of fixing the District's actual damages. The Contractor and the District agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. The Contractor and the Surety shall be jointly and severally liable to the District for any Liquidated Damages liability of the Contractor exceeding the Contract Price then held or retained by the District. The Contractor and the District acknowledge and agree that the provisions of this Article 7.5 are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement.

## 8. Contract Price

- 8.1. Cost Breakdown of Contract Price. Within fifteen (15) days of the execution of the Agreement by Contractor, Contractor shall furnish, on forms provided by the District, a detailed estimate and complete Cost Breakdown of the Contract Price. The Cost Breakdown shall be subject to the District's review and acceptance of the content thereof. If the District objects to any portion of the Cost Breakdown, within five (5) days of the Contractor's receipt of the District's written objection(s), Contractor shall submit a revised Cost Breakdown to the District for review and acceptance. The foregoing procedure shall continue until the District has accepted of the entirety of the Cost Breakdown. The Cost Breakdown accepted by the District shall not be modified by the Contractor without the prior consent of the District, which may be granted, conditioned or denied in the sole discretion of the District.

### 8.2. Progress Payments.

8.2.1. Applications for Progress Payments ("Payment Applications"). During performance of the Work, the Contractor shall submit monthly Payment Applications, on the first (1<sup>st</sup>) working day of each month, to the Construction Manager, Project Inspector and Architect, on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding



month for the purpose of the District's making of Progress Payments thereon. Values utilized in Payment Applications shall be based upon the District accepted Cost Breakdown.

8.2.2. District's Review of Payment Applications. In accordance with Public Contract Code §20104.50, upon receipt of a Payment Application, the District shall cause the same to be reviewed by the Project Inspector, Construction Manager and Architect, as soon as is practicable, for the purpose of determining that the Payment Application is a proper Payment Application. A Payment Application is "proper" only if it is submitted on the form approved by the District, with all of the information completely and accurately provided and such completed Payment Application is accompanied by: (i) the form of Verification of Certified Payroll Records Submittal to Labor Commissioner, executed under penalty of perjury by the Contractor's Superintendent and/or the Contractor PM; which verifies that all Certified Payroll Records for the Contractor and all Subcontractors for the period of time covered by the Application for Progress Payment have been completed and submitted in strict conformity with Labor Code §1771.4; (ii) a breakdown identifying each Subcontractor/Material Supplier to be disbursed a portion of the requested Progress Payment and the amount of the Progress Payment to be disbursed to each Subcontractor/Material Supplier so identified; (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8132 of the Contractor, all Subcontractors and Material Suppliers covering the Progress Payment requested; (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §8134 of the Contractor, Subcontractors and Material Suppliers covering the Progress Payment received by the Contractor under the prior Payment Application; and (v) a certification by the Contractor that it has continuously maintained the Record Drawings. Submittal of all of the foregoing is an express condition precedent to the District's obligation to disburse any Progress Payment. If a Payment Application is determined by the District not to be a "proper" Payment Application, the Payment Application will be returned by the District to the Contractor (along with a written document setting forth the reason(s) why the Payment Application is not proper) as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof.

8.2.3. Review of Payment Applications. Upon receipt of Payment Application, the Architect, Construction Manager and Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Payment Application which is properly due to the Contractor under the terms of the Contract Documents.

### 8.3. District's Disbursement of Progress Payments.

8.3.1. Timely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, within thirty (30) days after the District's receipt of a proper Payment Application, the District will pay the Contractor ninety five percent (95%) of the value of the Work indicated in the Payment Application which is actually in place as of the date of the Payment Application and as verified and approved by the Project Inspector, Construction Manager and Architect, along with the pro rata portion of the Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the Contractor's submission of a "proper" Payment Application as defined hereinabove. If a Payment Application is not "proper" due to the failure or refusal of the Contractor to comply with conditions precedent to the District's obligation to disburse a Progress Payment, or incompleteness or inaccuracies in any such documents submitted, the thirty (30) day period for the District's timely disbursement of a Progress Payment shall commence on the date that the District is actually in receipt of documents not submitted with the Payment Application, or corrections to documents with the Payment Application so as to render them complete and accurate.

8.3.2. Untimely Disbursement of Progress Payments. Pursuant to Public Contract Code

§20104.50, if the District fails to make any Progress Payment within thirty (30) days after receipt of an undisputed and proper Payment Application, the District shall pay the Contractor interest on the undisputed amount of such Payment Application equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a).

8.3.3. District's Right to Disburse Progress Payments by Joint Checks. The District may in its sole discretion issue joint checks to the Contractor and Subcontractors or Material Suppliers in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder. The Contractor shall cooperate with the District and subcontractors/Material Suppliers in the issuance or processing of joint checks.

8.3.4. No Waiver of Defective or Non-Conforming Work. The approval of any Payment Application or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of Defective or Non-Conforming Work.

8.3.5. Progress Payments for Changed Work. The Contractor's Payment Applications may include requests for payment for Changes which have been authorized and approved by the District, Construction Manager, Project Inspector, Architect and all other governmental agencies with jurisdiction over such Change. Except as provided for herein, no other payment shall be made by the District for Changes.

8.3.6. Materials or Equipment Not Incorporated Into the Work. No Progress Payments will be made for materials or equipment not incorporated into the Work at the time a Payment Application is submitted.

8.3.7. Title to Work. The Contractor warrants that title to all Work covered by a Payment Application will pass to the District no later than the time of payment.

8.4. Substitute Security for Retention. Eligible and equivalent securities may be substituted for Retention at the request and expense of the Contractor pursuant to California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of the Contractor to request substitution of eligible and equivalent securities for Retention prior to the Contractor's submission of the first Payment Application is the Contractor's waiver of rights under Public Contract Code §22300.

8.5. Final Payment.

8.5.1. Application for Final Payment. When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Architect, Construction Manager and Project Inspector will promptly make a final inspection of the Work and when the Architect, Construction Manager and Project Inspector find the Work acceptable under the Contract Documents and that the Contractor has completed all other obligations of the Contractor, the Architect, Construction Manager and Project Inspector will approve the Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the Contract Documents and that the Contractor is entitled to receipt of Final Payment. The Final Payment shall include the remaining balance of the Contract Price and Retention previously withheld by the District, less offsets and deductions thereto.

8.5.2. Conditions Precedent to Disbursement of Final Payment. Submittal of the following are express conditions precedent to the District's obligation to disburse the Final Payment: (i) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §§8136 or 8138, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (ii) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (iii) the Record Drawings; (iv) the form of Guarantee included in the Contract Documents duly executed

by an authorized representative of the Contractor; (v) all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; and (vi) written evidence of the Contractor's filing of the DSA Final Verified Report.

8.5.3. Disbursement of Final Payment. Provided that the District is then in receipt of all materials set forth in Article 8.5.2 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance, the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute. If the Contractor complies with all of the conditions precedent to the District's disbursement of the Final Payment, except for written evidence of the Contractor's filing of the DSA Final Verified Report, the District may withhold and retain ten percent (10%) of the Final Payment in accordance with Article 4.22.2 of these General Conditions. In such event, provided that the Contractor has fully complied with and satisfied all other conditions precedent set forth in Article 8.5.2, the District will disburse the remaining balance of the Final Payment to the Contractor; such disbursement shall constitute the District's full and complete performance of payment obligations to the Contractor hereunder.

8.5.4. Waiver of Claims. The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.

8.5.5. Claims Asserted After Final Payment. Any stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, Material Supplier or others in connection with or for Work is the sole and exclusive responsibility of the Contractor who shall indemnify, defend and hold harmless the Indemnified Parties from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys' fees.

- 8.6. Withholding of Payments. The District may withhold and retain the Contract Price, in whole or in part, on account of: (i) uncorrected Defective or Non-Conforming Work; (ii) failure of the Contractor to make payments when due laborers, Subcontractors or Material Suppliers; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Notice Claims; (iv) reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor, including any amounts due from the Contractor to the District under the Contract Documents; or (vii) the Contractor's failure to perform any of its obligations under the Contract Documents, its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the Construction Manager, Project Inspector, Architect or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld. The foregoing notwithstanding, if the District withholds: (i) ten percent (10%) of the Final Payment pursuant to Articles 4.22.2 and 8.5.3 of these General Conditions; or (ii) any amount incurred to complete an obligation of the Contractor hereunder, the Contractor shall not be entitled to receipt or payment of any portion of such withholdings.

- 8.7. Payments to Subcontractors. The Contractor shall pay all Subcontractors on account of Work performed by Subcontractors in accordance with the terms of their respective subcontracts and pursuant to Business & Professions Code §7108.5 and Public Contract Code §7201.

## 9. Changes

- 9.1. Changes to the Work. The District, at any time, by written order, may make Changes within the general scope of the Work or issue additional instructions, require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change without prior written authorization from the District. The Contractor shall promptly commence and diligently complete any District authorized Change; the Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change authorized by the District due to the inability of the Contractor and the District to agree upon the adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order in connection with any Change authorized by the District is not a condition precedent to Contractor's obligation to promptly commence and diligently complete any Change authorized by the District hereunder. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of its obligations under the Contract Documents. Any requirement of notice of Changes to the Surety shall be the responsibility of the Contractor. Changes shall be subject to DSA approval.
- 9.2. Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination (collectively "Instruction Order") from the District, Construction Manager, Project Inspector or Architect which Contractor believes is a change to the Work, or requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Architect, Construction Manager and Project Inspector written notice within ten (10) days of the Instruction Order and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence and the Contractor acknowledges that its failure to give written notice within ten (10) days of the date of an Instruction Order is deemed Contractor's waiver of any right to adjustment of the Contract Time or the Contract Price on account of such Instruction Order. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the Instruction Order that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, no Instruction Order shall not be treated as a Change and the Contractor waives any adjustment to the Contract Price or the Contract Time on account thereof.
- 9.3. Contractor Submittal of Data. Within thirty (30) days after receipt of a written order directing a Change or furnishing the written notice regarding any Instruction Order, the Contractor shall submit to the Architect, Project Inspector, Construction Manager and District a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made.
- 9.4. Adjustment to Contract Price on Account of Changes to the Work. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:
- 9.4.1. Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct

increase or decrease in costs on account of the Change. Upon request of the District or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation.

9.4.2. Determination by the District. By the District, whether or not negotiations are initiated pursuant to Article 9.4.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District. If the procedure set forth in this Article 9.4.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, Architect and Construction Manager, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District, Architect and Construction Manager of Contractor's objections to the District's determination of the Contract Price adjustment is deemed Contractor's acceptance of the District's determination and a waiver of any right of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the adjustment to the Contract Price pursuant to this Article 9.4.2, Contractor shall promptly commence and diligently complete any such Change.

9.4.3. Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.4.1 or 9.4.2 above, the basis for adjustment of the Contract Price shall be as follows:

9.4.3.1. Labor. The Contractor shall be compensated for the costs of field labor actually and directly utilized in the performance of the Change. Labor costs shall be limited to field labor for labor classification(s) necessary to perform the Change. Use of a labor classification which increases labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

9.4.3.2. Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs shall be the then lowest wholesale price at which identical or similar materials/equipment are available in the quantities required to perform the Change. The District may furnish materials and/or equipment for Changes, in which event the Contractor shall not be compensated for any mark-up thereon.

9.4.3.3. Construction Equipment. The Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes in increments of fifteen (15) minutes. No costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to compensation for Construction Equipment or tools used for Changes with a replacement value of \$500.00 or less. Construction Equipment costs shall not exceed rental rates established by construction equipment rental agencies in the locality of the Site. The allowable rate for Construction Equipment includes compensation for rental costs, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incidental to

the use of such Construction Equipment.

9.4.4. Mark-up on Costs of Changes to the Work. The allowance for mark-ups on the costs of the Change for all overhead (including home office, supervision and field overhead costs, including personnel costs; labor burdens on personnel costs; insurance premiums), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in the Special Conditions, regardless of the number of Subcontractors performing any portion of any Change. If a Change reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the District to the Contractor for the reduced or deleted Work; the Contract Price shall be reduced by the actual cost for the reduced or deleted Work multiplied by the percentage set forth in the Special Conditions for mark-ups on the cost of a Change adding to the scope of the Work.

9.4.5. Contractor Maintenance of Records. If the Contractor is directed to perform any Change pursuant to Article 9.1 or 9.2, the Contractor shall maintain detailed separate records on a daily basis for each separate Change. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with any Change to the Work. Subcontractors shall maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent/Subcontractor's Superintendent and shall incorporate a statement that all information contained therein is true, accurate, complete and relates only to the Change referenced therein. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, Architect, Construction Manager or Project Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined by the District, the District's reasonable good faith determination of the adjustment to the Contract Price on account of such Change shall be final, conclusive and binding upon the Contractor. The Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, other Contractor obligations relating to Changes to the Work.

- 9.5. Adjustment to Contract Time. If any Change(s) are authorized by the District, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change
- 9.6. Addition or Deletion of Alternate Bid Item(s). If the Bid for the Work includes proposal(s) for Alternate Bid Item(s), during performance of the Work, the District may elect, to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if they formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid. If any Alternate Bid Item is added or deleted pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted.
- 9.7. Change Orders. If the District approves of a Change, a written Change Order prepared by the Architect on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall: (i) be deemed full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order; (ii) incorporate adjustments to the Contract Time; and (iii) constitute the Contractor's waiver of rights of rights under Civil Code §1542. Any claim or item relating to any Change incorporated

into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution. The Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof; attempted or purported modifications or amendments are not binding upon the District and are null, void and unenforceable. Change Orders shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order.

- 9.8. Unilateral Change Order. A Unilateral Change Order is a written Change Order issued by or on behalf of the District before the Contractor and District have agreed on the extent of adjustment of the Contract Time or the Contract Price relating to the Change reflected in a Unilateral Change Order. A Unilateral Change Order shall describe the scope and nature of the Change and set forth the adjustment to the Contract Time and Contract Price, if any. The District shall forward to the Contractor a copy of the Unilateral Change Order (for information only) at least five (5) days prior to the Board of Trustees' review and consideration of the Unilateral Change Order. Any Unilateral Change Order issued hereunder shall be binding upon the District and Contractor upon action of the District's Board of Trustees to ratify or approve such Unilateral Change Order. The objections, if any, of the Contractor to the extent of adjustment of the Contract Time or the Contract Price on account of the Change(s) incorporated into a Unilateral Change Order shall be submitted in writing by the Contractor to the District, Construction Manager and Architect not more than fifteen (15) days after the date of the District's Board of Trustees action to approve or ratify a Unilateral Change Order. The absence of the Contractor's written objections to a Unilateral Change Order within the time set forth above shall be deemed the Contractor's acceptance of the Contract Time and/or Contract Price adjustment set forth in a Unilateral Change Order for the Changes described therein and the Contractor shall be deemed to have knowingly waived any right to seek additional adjustments of the Contract Time or the Contract Price on account of Change(s) incorporated into such a Unilateral Change Order.
- 9.9. Construction Change Directive. A Construction Change Directive is a written instrument issued by or on behalf of the District directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. The Contractor shall promptly commence and diligently complete any Change to the Work subject to a Construction Change Directive issued hereunder. The issuance of a Change Order in connection with any Construction Change Directive is not a condition precedent to Contractor's obligation to promptly commence and diligently complete a Construction Change Directive. Upon completion of a Construction Change Directive, if the Contractor and District have not agreed on the adjustment of Contract Time and/or Contract Price, the District shall issue a Unilateral Change Order for such Construction Change Directive.
- 9.10. Contractor Notice of Changes. If the Contractor claims that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time ("Potential Changes"), the Contractor shall notify the Project Inspector, Construction Manager and Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the Potential Changes. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the Construction Manager, Project Inspector and Architect. Time is of the essence in Contractor's written notice pursuant to the preceding so that the District can promptly investigate and consider alternative measures to the address such Potential Changes.

Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any Potential Changes shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such Potential Changes.

- 9.11. Disputed Changes. If any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents.
- 9.12. Minor Changes in the Work. The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor.
- 9.13. Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice in strict conformity with the Contract Documents shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense.

## **10. Separate Contractors**

- 10.1. District's Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Work with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment in strict conformity with the Contract Documents shall be deemed a waiver of the same.
- 10.2. District's Coordination of Separate Contractors. The District shall coordinate the activities of the District's own forces and separate contractor(s) with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Accepted Construction Schedule deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.
- 10.3. Mutual Responsibility. The Contractor shall afford the District and separate contractors of the District with a reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site.
- 10.4. Discrepancies or Defects. If any part of the Work depends for proper execution or results upon construction or operations by the District or a separate contractor to the District, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect, Construction Manager and Project Inspector any discrepancies or defects in such other



construction that renders it unsuitable for such proper execution and results.

## **11. Tests; Inspections; Observations**

- 11.1. Contractor's Notice. If the Contract Documents, Laws or any public authority with jurisdiction over the Work require the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, Construction Manager and Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If any portion of the Work subject to tests, inspection or approval is covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time.
- 11.2. Cost of Tests and Inspections. The District will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment which are conducted at the Site or locations within a one hundred (100) mile radius of the Site. All fees, costs or expenses for subsequent tests/inspections or for tests/inspections conducted at a location more than a one hundred (100) mile radius from the Site (including without limitation, travel and travel-related expenses) shall be borne solely and exclusively by the Contractor.
- 11.3. Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents or the Laws. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by the Laws, including without limitation, Title 24 of the California Code of Regulations. Test/inspection standards shall be as set forth in the Contract Documents or established by the Laws. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector, Construction Manager or Architect and not by the Contractor.
- 11.4. Additional Tests, Inspections and Approvals. If the Architect, Construction Manager, Project Inspector or public authorities having jurisdiction over any portion of the Work require additional testing, inspection or approval, the Architect, Project Inspector or Construction Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the Architect, Construction Manager and Project Inspector of when and where tests and inspections are to be made so the Construction Manager, Project Inspector and Architect may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the services, the Architect or its consultants, the Construction Manager and Project Inspector in connection therewith.
- 11.5. Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect, Project Inspector and Construction Manager.
- 11.6. Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay

in the progress of the Work. The Contractor shall be liable for delays to completion of the Work if the Contractor fails coordinate and timely schedule required tests, inspections or observations of the Work.

## **12. Uncovering and Correction of Work**

- 12.1. Uncovering of Work. If any portion of the Work is covered contrary to the request of the Architect, Construction Manager, Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect, Construction Manager or Project Inspector, be uncovered for observation by the Architect, Project Inspector and/or the Construction Manager and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.
- 12.2. Rejection of Work. Defective or Non-Conforming Work may be rejected by the District, Construction Manager, Architect or Project Inspector. The Contractor shall correct such rejected Work without adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the Defective or Non-conforming Work.
- 12.3. Correction of Work. The Contractor shall promptly correct any portion of the Work rejected by the District, Construction Manager, Architect or Project Inspector as Defective or Non-Conforming Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged Work, whether completed or partially completed.
- 12.4. Removal of Non-Conforming or Defective Work. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the District.
- 12.5. Failure of Contractor to Correct Work. If the Contractor fails to commence to correct Defective or Non-Conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents and at the expense of the Contractor.
- 12.6. Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Defective or Non-Conforming Work instead of requiring its removal and correction, in which case the Contract Price shall be equitably reduced.

## **13. Warranties**

- 13.1. Workmanship and Materials. The Contractor warrants to the District that: (i) all materials and equipment furnished under the Contract Documents are new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents; and (ii) all Work and workmanship is of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed Defective or Non-Conforming Work and subject to repair, replacement or other remedial action by the Contractor to render such work in accordance the Contract Documents. The Contractor expressly warrants the

merchantability, the fitness for use, and quality of all Work; such warranty of the Contractor in addition, and not in lieu of, any warranty given by the manufacturer or supplier of such item.

- 13.2. Warranty Work. If, within one (1) year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any Work is Defective, Non-Conforming, not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action within seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If the Contractor fails or refuses to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, the District may, in the sole discretion of the District: (i) cause such corrective Work to be performed and completed; or (ii) upon notice and demand to the Performance Bond Surety, require the Surety to complete corrective work. If the District elects to complete corrective work under (i) above, the Contractor and the Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. The obligations of the Contractor hereunder are in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item incorporated into the Work, or otherwise recognized, prescribed or imposed by the Laws. Neither the District's Final Acceptance, the making of Final Payment, nor the use or occupancy of the Work, in whole or in part, by District shall nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.
- 13.3. Guarantee. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.
- 13.4. Survival of Warranties. The Contractor's warranty and guaranty obligations hereunder shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

#### 14. Suspension of Work

- 14.1. District's Right to Suspend Work. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.
- 14.2. Adjustments to Contract Price and Contract Time. If the District directs suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of

which will remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. If the District directs suspension of the Work, the Contract Time shall be equitably adjusted to reflect the duration of the District's suspension of the Work.

## 15. Termination

### 15.1. Termination for Cause.

15.1.1. District's Right to Terminate. The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) the Contractor refuses or fails to prosecute the Work with diligence to achieve Substantial Completion of the Work within the Contract Time; (ii) the Contractor fails to achieve Substantial Completion of the Work within the Contract Time; (iii) the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws; (iv) the Contractor repeatedly fails to supply sufficient skilled workmen or sufficient quantities of suitable materials or equipment; (v) the Contractor repeatedly fails to make payments to any Subcontractor, Material Suppliers or others for labor, materials or equipment furnished in connection with the Work; (vi) the Contractor disregards the Laws or other requirements of any public entity having jurisdiction over the Work; (vii) the Contractor disregards proper directives of the Architect, Construction Manager, Project Inspector or District; (viii) the Contractor performs Work which deviates from requirements of the Contract Documents and fails or refuses to correct such Work; or (ix) the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or the Laws.

15.1.2. District's Rights Upon Termination. If the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the Site. The District may take possession of the Work and of all of the Contractor's tools, appliances, Construction Equipment, machinery, materials, and other items at or about the Site, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. The District shall have the sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work; the District shall not be required to obtain the lowest price for completion of the Work. If the District takes bids for completion of the Work, the Contractor is not eligible for award of such contract(s).

15.1.3. Completion by the Surety. If the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work, in which case the rights and obligations of the District and the Surety shall be as set forth in the Performance Bond. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above, provided that such action of the District shall not operate to modify, diminish or otherwise affect the liability of the Surety or Contractor to the District under the Contract Documents, Performance Bond or the Laws.

15.1.4. Assignment and Assumption of Subcontracts. Upon termination pursuant to the foregoing, the District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and/or assign the Subcontract or Purchase Order to the District or such other person or entity designated by the District.

15.1.5. Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and the Surety shall be jointly and severally liable for payment of the difference to the District.

15.1.6. Conversion to Termination for Convenience. If the Contract is terminated under this Article 15.1, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

15.1.7. District's Rights Cumulative. If the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by the Laws or under the Contract Documents.

- 15.2. Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the Site but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District. The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District's convenience.

## 16. Miscellaneous

- 16.1. Governing Law; Interpretation. This Contract shall be governed by and interpreted pursuant to the laws of the State of California. The titles used in the Contract Documents are for convenience of reference only shall have no effect upon the interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor. The neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular. Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.
- 16.2. Successors and Assigns. Unless otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.

- 16.3. Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights or remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by the Laws. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or the Laws nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder.
- 16.4. Severability. If any provision of the Contract Documents is deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.
- 16.5. No Assignment by Contractor. The Contractor shall not assign the Contract or any obligation of the Contractor thereunder, in whole or in part, without the express prior written consent and approval of the District, which may be granted, conditioned or withheld in the sole and exclusive discretion of the District.
- 16.6. Time of Essence. Time is of the essence in the Contractor's performance of its obligations under the Contract Documents.
- 16.7. Independent Contractor Status. The Contractor is an independent contractor to the District and not an agent or employee of the District.
- 16.8. Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by: (i) personal delivery; or by (ii) postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. For personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. For mailed notices, such notice shall be deemed effective on the third (3<sup>rd</sup>) working day after deposit in the mail.
- 16.9. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents or the Work, the Contractor shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.
- 16.10. Dispute Resolution; Arbitration.
- 16.10.1. Claims Under \$375,000.00. Claims between the District and the Contractor of \$375,000.00 or less shall be resolved pursuant to Public Contract Code, §§20104 et seq.; provided however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents for the Contractor's notification to the District of such claim or extend the time for the giving of such notice. The term "claims" used herein shall be as defined in Public Contract Code §20104(b)(2).
- 16.10.2. JAMS Arbitration. Except as provided in Article 16.10.1, any other claims, disputes,

disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Work, the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted by a JAMS arbitrator with expertise in public works construction matters and in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS in effect as of the date that a Demand for Arbitration is filed, except as modified herein. The locale for any arbitration shall be the regional office of JAMS closest to the Site.

16.10.3. Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event after the date when institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If either the District or the Contractor assert that the other filed a Demand for Arbitration after expiration of the applicable statute of limitations, no arbitration proceeding shall be commenced until there is a judicial adjudication of whether or not matters raised in the Demand for Arbitration are barred by the applicable statute of limitations and a judgment or an order is entered by a Superior Court of the State of California with competent jurisdiction.

16.10.4. Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures under California Code of Civil Procedure §1283.05 shall be applicable, and the same are incorporated herein by this reference.

16.10.5. Arbitrator's Award. Notwithstanding Rule 24 of JAMS Comprehensive Arbitration Rules and Procedures, in accordance with California Code of Civil Procedure §1296, in any arbitration commenced hereunder, the arbitrator's award shall be supported by law and substantial evidence; the District and Contractor hereby expressly agree that a court shall, subject to California Code of Civil Procedure §1286.4, vacate the arbitrator's award if after review it determines either that the arbitrator's award is not supported by substantial evidence or that it is based on an error of law. Any arbitration award that does not include written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. Subject to the foregoing provisions, the arbitrator's award shall be final, binding and conclusive upon the District and the Contractor.

16.10.6. Costs. Expenses and fees of the arbitration and the arbitrator shall be divided equally among the parties to the arbitration. Each party to an arbitration commenced hereunder shall bear its own attorneys' fees, witness fees and other costs and expenses in connection with such arbitration. The foregoing notwithstanding, the arbitrator may award arbitration costs, consisting of arbitration expenses and the arbitrator's fees but excluding attorneys' fees, to the prevailing party.

16.10.7. Confirmation of Arbitration Award. The confirmation, enforcement, vacation or correction of an arbitration award shall be by the Superior Court of the County in which the Site is located. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

16.10.8. Inapplicability to Bid Bond. This Article 16.11 is not applicable to disputes, disagreements or enforcement of the Bid Bond; all claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated exclusively by judicial proceedings commenced in a court of competent jurisdiction.

16.10.9. Government Code Claims. All claims, demands, disputes, disagreements or other matters in controversy asserted by the Contractor against the District in a demand for arbitration filed pursuant to Article 16.10.2 or asserted by the Contractor against the District in any arbitration proceeding commenced pursuant to Article 16.10.2 above, shall be deemed a "suit for money or damages" under Government Code §900 et seq. An express condition precedent to the Contractor's commencement of arbitration proceedings under Article 16.10.2, is the Contractor's strict compliance with and exhaustion of remedies and procedures under Government Code §900 et seq, including without limitation, §§945.4, 945.6 and 946.

Notwithstanding the dispute resolution provisions set forth herein, all claims demands, disputes, disagreements or other matters in controversy asserted by the Contractor against the District seeking money or damages shall first be presented to the District's Board of Trustees and acted upon or deemed rejected by the Board of Trustees pursuant to Government Code §900 et seq.

- 16.11. Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by the Laws, neither the District nor the Contractor shall recover from the other any attorneys' fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.
- 16.12. Provisions Required by the Laws Deemed Inserted. Each and every provision of the Laws and clause required by the Laws to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 16.13. Days. Unless otherwise expressly stated, references to "days" in the Contract Documents are calendar days.
- 16.14. Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

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## SPECIAL CONDITIONS

1. Application of Special Conditions. These Special Conditions form a part of the Contract Documents for the Work generally described as: **CCC-029 BOILER REPLACEMENT PROJECT.**
2. Liquidated Damages. The per diem rate of Liquidated Damages for delayed Substantial Completion, delayed submission of Submittals and delayed completion of Punchlist shall be as set forth herein.
  - 2.1. Delayed Substantial Completion. If Substantial Completion is not achieved on or before expiration of the Contract Time, the Contractor shall be liable to the District for Liquidated Damages from the date of expiration of the Contract Time to the date that the Contractor achieves Substantial Completion of the Work at the per diem rate of Five Hundred Dollars (\$500.00).
  - 2.2. Delayed Submission of Submittals. If the Contractor fails to submit a Submittal in accordance with the Submittal Schedule, the Contractor shall be liable to the District for Liquidated Damages for each delayed Submittal at the per diem rate of Five Hundred Dollars (\$500.00) from the date that such Submittal was due to be submitted pursuant to the Submittal Schedule and the date that the Contractor actually submits the Submittal to the Architect.
  - 2.3. Delayed Punchlist Completion. If the Contractor fails to complete Punchlist within the time established pursuant to the Contract Documents, the Contractor shall be liable to the District for Liquidated Damages from the date established for completion of Punchlist until the date that all Punchlist is actually completed at the per diem rate of Five Hundred Dollars (\$500.00).
  - 2.4. Surety Liability. Subject only to limitations established by the penal sum of the Performance Bond, the Surety issuing the Performance Bond shall be liable to the District for Liquidated Damages due from the Contractor.
3. Construction Manager. The Construction Manager is the District or their designee.
4. District Furnished Drawings and Specifications. Pursuant to Article 2.1.3 of the General Conditions, the District will furnish to the Contractor for use solely and exclusively in connection with performance of the Work Choose an item. (Choose an item.) copies of the Drawings and Specifications. Additional copies of the Drawings and Specifications may be reproduced by the Contractor at its cost and expense.
5. Hours and Days of Work at the Site.
  - 5.1. Work Hours/Days. Subject to limitations set forth elsewhere in the Contract Documents and below, the hours/days of Work at the Site are: 7am – 5pm Mondays through Fridays, except for holiday days.
  - 5.2. Limitations on Work Hours/Days. Work activities at the Site will be limited or prohibited on days: (i) devoted to student testing or when testing of students may be adversely affected by Work activities at the Site; or (ii) when other special events or functions are scheduled. The Contractor shall familiarize itself with District activities at the Site to avoid Work activity interferences or disturbances to such District activities. The Contractor's Construction Schedule shall take into account the District activities which limit or preclude Work activities at the Site.
6. Contractor Personnel Parking. Personnel of the Contractor, Subcontractors and others performing Work at the Site will be allowed to park, with a valid District parking permit, in the parking spaces at a location designated by the District. Parking permit charges, if any, shall be borne and paid by the Contractor without adjustment of the Contract Price. The foregoing notwithstanding, the extent or location of parking for such personnel may be limited, restricted, eliminated or modified by the District as reasonably necessary to facilitate and accommodate necessary parking for the District's

students, staff and visitors engaged in activities and functions in and about the Site. Neither the Contract Price nor the Contract Time shall be adjusted as a result of any such District modifications to the extent or location of parking.

7. Site Perimeter Fencing. The Contractor shall install a chain link fence with fabric privacy screen around the entire perimeter of the Site to prevent dust and debris being blown from the Site to adjacent areas, including without limitation, adjacent streets and residential areas. Without adjustment of the Contract Time or the Contract Price the Contractor shall maintain all fencing in good condition and clear of any graffiti or damage. The Contractor shall remove or relocate such fencing as directed by the District or the Construction Manager.
8. Facilities/Services for Project Inspector. Pursuant to Article 4.14 of the General Conditions, during the Work, the Contractor shall provide/furnish the following facilities/services or other items for use by the Project Inspector: \_\_\_\_\_
9. District Provided Temporary Utilities. Pursuant to Article 4.3.4 of the General Conditions, during the Contractor's performance of the Work, the District will provide the Contractor with utility services and a point of connection for Choose an item.. If the District provides any utility services for use by the Contractor: (i) the District may discontinue, limit or condition use of such services by a Contractor if the District reasonably determines that the Contractor has wasted such utilities, and (ii) the District shall not be liable to the Contractor, nor shall the Contract Time or the Contract Price be increased if any District provided temporary utility service is discontinued or disrupted for any reason other than the District's non-payment of undisputed utility charges. If provided by the District, the Contractor may use the temporary electrical power and domestic potable water service in connection with the Work provided that: (i) the District may discontinue, limit or condition use of such services by a Contractor if the District reasonably determines that the Contractor has wasted such utilities, and (ii) the District shall not be liable to the Contractor, nor shall the Contract Time or the Contract Price be increased if any District provided temporary utility service is discontinued or disrupted for any reason other than the District's non-payment of undisputed utility charges. Notwithstanding any provision of the Contract Documents to the contrary, the Contractor shall not use District provided water supply in connection with any earthwork or grading operations; water supply for earthwork or grading operations shall be obtained by the Contractor, without adjustment of the Contract Time or the Contract Price, from an offsite source or mobile water delivery service. Further, notwithstanding the District providing a point of connection for the Contractor's telephone/data service at the Site, the Contractor is solely responsible for the payment of utility service charges therefor.
10. Mark-Ups on Changes to the Work. In the event of Changes to the Work, pursuant to Article 9 of the General Conditions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.
  - 10.1. Subcontractor Performed Changes. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Nine Percent (9%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to One Percent (1%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change; the foregoing mark-up shall not be applied to the Subcontractor mark-up.
  - 10.2. Contractor Performed Changes. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Ten Percent (10%).
  - 10.3. Bond Premium Costs. In addition to the foregoing mark-ups on the direct costs of labor and

materials, a bond premium expense in an amount equal to the lesser of the Contractor's actual bond premium rate of One Percent (1%) of the total actual direct costs of labor and materials (before Subcontractor and Contractor mark-ups) will be allowed.

10.4. Exclusions From Mark-Up of Actual Costs. Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment.

11. Rain Days. The Contractor's Construction Schedules prepared pursuant to Article 7 of the General Conditions shall incorporate the Rain Days set forth below; there shall be no adjustment to the Contract Time on account of unusually severe weather conditions resulting from rainfall until the actual number of Rain Days exceeds the number of Rain Days set forth below. The Contractor's Construction Schedule shall incorporate the following number of Rain Days for each Calendar Month of the Contract Time:

Month	Rain Days
January	four (4)
February	four (4)
March	three (3)
April	two (2)
May	two (2)
June	none
July	none
August	none
September	none
October	two (2)
November	three (3)
December	four (4)

12. Deferred Approval Items. The following Deferred Approval Items are incorporated into and made a part of the Work: none. The Contractor is responsible for preparing all materials necessary for DSA review and approval of Deferred Approval Items without adjustment of the Contract Time or the Contract Price.

**[CONTINUED ON NEXT PAGE]**

**13. Insurance Coverages**

13.1. **Contractor Insurance.** Pursuant to Article 6 of the General Conditions, the Contractor shall obtain and maintain the following insurance coverages with minimum coverage amounts as set forth below:

<b>Policy of Insurance</b>	<b>Minimum Coverage Amount</b>
Commercial General Liability Insurance	Per Occurrence: One Million Dollars (\$1,000,000)
	Aggregate: Two Million Dollars (\$2,000,000)
Workers Compensation	In accordance with the Laws
Employers Liability	One Million Dollars (\$1,000,000)
Builders Risk	Full insurable value of the Work; Seismic coverage: Choose an item.

13.2. **Subcontractor Insurance.** Pursuant to Article 6 of the General Conditions, each Subcontractor shall obtain and maintain the following insurance coverages with minimum coverage amounts as set forth below

<b>Policy of Insurance</b>	<b>Minimum Coverage Amount</b>
Commercial General Liability Insurance	Per Occurrence: One Million Dollars (\$1,000,000)
	Aggregate: Two Million Dollars (\$2,000,000)
Workers Compensation	In accordance with the Laws
Employers Liability	One Million Dollars (\$1,000,000)

**[END OF SECTION]**